

000571

334
11/16/07

THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 17, 2007

REPORT NO.: 07-162

ATTENTION: Council President and City Council
Agenda of November 6, 2007

SUBJECT: Affordable Housing Density Bonus. Project Number 63422.
Citywide. Process Five.

REFERENCE: Manager's Report Nos. 03-237, 04-127, 05-028, 05-107.
Planning Commission Report No. PC 06-264.

REQUESTED ACTION:

Approval of amendments to the Land Development Code (LDC) and Local Coastal Program related to the Affordable Housing Density Bonus regulations.

STAFF RECOMMENDATION:

1. **CERTIFY** Supplement to Environmental Impact Report No. 96-0333 (Project 63422) and adopt the Findings and Statement of Overriding Considerations.
2. **APPROVE** the amendments to the Land Development Code and the City's Local Coastal Program related to the city's Affordable Housing Density Bonus regulations as recommended by the Mayor's Office (Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7).

SUMMARY:

State law requires cities in California grant density bonuses and development incentives to residential projects when restrictions are implemented to maintain specified affordability levels.

The California State Legislature has amended the State Density Bonus Law three times since 2003, with the latest amendment being implemented in January 2006. The state's amended Density Bonus Law already applies in the City of San Diego. The purpose of this amendment to

the LDC and Local Coastal Program is to comply with the state requirement that the city adopt an ordinance that specifies how compliance with state law will be implemented, and to craft regulations that provide guidance and protections within the city's regulatory framework. Adoption of the Affordable Housing Density Bonus Regulations will provide applicants increased densities and incentives that encourage development of new affordable and senior housing throughout the city.

Planning Commission Recommendation:

On October 12, 2006 the Planning Commission voted 5-0-0 to recommend approval of the proposed amendments related to affordable housing density bonus with the following recommendations:

- Investigate the relationship between parking needs and affordable housing to determine if the parking standards should be reduced;
- Look at the relationship between the locations of projects using density bonus and transit to see if there can be a further reduction in parking requirements;
- Attempt to simplify the way the regulations are written to make them more user friendly;
- Track the use of the density bonus provisions to learn where they are being used, the incentives requested, and how existing zoning patterns in the city may be affecting its use;
- Consider allowing applicants that satisfy the affordable housing component of the regulations to request the incentive(s) provided in the regulations while forgoing the increase in density; and
- Remove the option of the in-lieu fee in the Inclusionary Housing Ordinance.

Background:

Since 2003 the California State Legislature has voted for three bills related to density bonus. The legislature intended that density bonus be an incentive program that would result in significant increases in the number of affordable housing units produced throughout the state. The regulations were designed to eliminate barriers to creating affordable housing that, over the years, have been implemented by local jurisdictions to avoid increases in residential density and prevent the perceived social ills of affordable housing. The draft Affordable Housing Density Bonus Regulations reflect the intent, and incorporate the requirements, of the State Density Bonus Law.

The City Planning and Community Investment Department has been working with the San Diego Housing Commission, the City Attorney's Office, and the Development Services Department to amend the city's Affordable Housing Density Bonus regulations since 2003. The amended regulations were docketed for City Council in January 2007 and continued to February in order

to address questions raised by council members. Between the January and February hearing the City Attorney's Office reconsidered the direction it had previously taken and determined that the State Density Bonus Law, as written, allowed for multiple interpretations. Prior to the February Council hearing the City Attorney's Office submitted a second, alternative ordinance for the City Council to consider. The City Council again continued the item for one month so that the differences in the ordinances could be worked out. The one month continuance was not sufficient to work out the differences and in March the item was returned to the Mayor's Office.

Since March the City Planning and Community Investment Department (CPCI), the San Diego Housing Commission, the City Attorney's Office, and Development Services Department have been working together toward the goal of providing either one ordinance that all agree with or, presenting an ordinance that represents the direction from the Mayor's Office but also presenting clearly delineated alternatives for the City Council to consider. In an effort to accomplish this CPCI eliminated two policy related components from its proposed regulations. This report supports the Mayor's recommended ordinance in Attachment 1A; however, an alternate version of the ordinance (Attachment 1B) which includes regulations to implement the policies favored by the City Attorney's Office, has been prepared for City Council consideration. With the exception of the language related to the policy issues, the two ordinances are identical. This report will address those differences in the report section titled "Mayor's Recommendations and Alternatives" (beginning on page 11 of this report).

The two policy related components of the regulations that CPCI removed from the proposed amendment relate to (1) the onsite building bonus for projects that satisfy their inclusionary housing requirement onsite and (2) added protections for environmentally sensitive lands (ESL) within the Coastal Overlay Zone. The two policy areas are unrelated. CPCI is comfortable removing these two components. It was revealed during the public review period that projects using the onsite building bonus in conjunction with State Density Bonus Law could achieve the maximum 35 percent density bonus without providing the minimum number of affordable units necessary to achieve the 35percent density bonus under State Density Bonus Law. Although removed from this proposal, the Housing Commission and CPCI will continue to research methods to encourage development of onsite inclusionary housing. Regarding removal of additional protections for ESL within the Coastal Overlay Zone, the city is required to submit the regulations to the California Coastal Commission for unconditional certification after City adoption of the regulations. Additional protections for environmentally sensitive lands within the Coastal Overlay Zone will be among the future discussions between City and California Coastal Commission staff.

Project Description:

Both drafts of the Affordable Housing Density Bonus Regulations (Attachments 1A and 1B) reflect the amendments made to State Density Bonus Law. The following is a summary of the significant changes to State Density Bonus Law that have been enacted.

- A new density bonus category was added for projects that donate land to the city to be developed with affordable housing.

- A new density bonus category was added for projects that include for-sale moderate income housing units in common interest developments.
- Upon resale of a moderate-income unit developed under the density bonus law, the local government shall recapture both the initial subsidy and a proportionate share of appreciation, unless there is a conflict with another funding source or law.
- All rental projects that receive a density bonus must maintain the affordable units at the required affordability level for 30 years.
- The maximum affordable housing density bonus was increased from 25 percent to 35 percent. A sliding scale of density bonus was created. The density bonus an applicant is granted is determined by the percentage of affordable units provided and the level of affordability (low income, very low income, or moderate income). Table 1 identifies the area median incomes for very low, low, and moderate income adjusted for household size.
- The senior housing density bonus is 20 percent and now also applies to senior mobilehome parks. The density bonus for senior housing is not restricted by income level.
- The city must grant up to three incentives to qualifying affordable housing projects that request incentives. The number of incentives a project is eligible for depends upon the percentage of affordable units provided and the level of affordability.
- Applicants choose the incentives and must demonstrate that the incentive(s) is necessary to make the housing units economically feasible. If the applicant demonstrates that the incentive is necessary to make the units economically feasible, the city must grant the requested incentive(s) unless a specific finding of denial is made.
- The findings to deny a requested incentive are that either the requested incentive is not necessary to provide the affordable units; or that the requested incentive would have an adverse impact on health, safety, the physical environment, or property listed on the California Register of Historical Resources.
- The city must offer an additional incentive to qualifying projects that include onsite day care facilities meeting specified conditions [see Section 143.0740(f) of the draft regulations in Attachments 1A and 1B].
- State Density Bonus Law provides specific parking ratios and standards for projects using the Affordable Housing Density Bonus Regulations. Attachment 2 compares the current city ratios to the proposed parking ratios. In addition to revised ratios, a development using density bonus may use tandem or uncovered parking to meet the parking standard. The city also proposes to restrict parking from the required front yard.

TABLE 1
Household Size and Income Level

Household Size	2007 Income Levels		
	Very Low ≤ 50% AMI	Low 50 – 80% AMI	Moderate 80 – 120% AMI
One	≤ \$ 24,550	\$ 24,550 – 39,300	\$ 39,300 – 58,300
Two	≤ \$ 28,100	\$ 28,100 – 44,900	\$ 44,900 – 66,700
Three	≤ \$ 31,600	\$ 31,600 – 50,555	\$ 50,555 – 75,000
Four	≤ \$ 35,100	\$ 35,100 – 56,150	\$ 56,150 – 83,300
Five	≤ \$ 37,900	\$ 37,900 – 60,650	\$ 60,650 – 90,000
Six	≤ \$ 40,700	\$ 40,700 – 65,150	\$ 65,150 – 96,700

Incentives

A major component of the state's amended Density Bonus Law is the incentive. The state amended law grants applicants up to three incentives when their project includes affordable housing units consistent with the requirements of the Density Bonus Law. The number of incentives to be granted is based upon the percentage of affordable units in the project and the level of affordability (very low-income, low-income, or moderate-income) as identified in Table 2. The incentives may take the form of deviations to development regulations.

TABLE 2
Number of Incentives
Fixed to Percent Density Bonus and Income Level

Number of Incentives	Percent Pre-Density Bonus Units		
	Very Low Income	Low Income	Moderate Income
1	5%	10%	10%
2	10%	20%	20%
3	15%	30%	30%

The State Density Bonus Law includes a "safety valve" (findings to deny an incentive) to address incentives that are not related to the provision of affordable housing, or that would result in an adverse impact. Recognizing that the overarching goal is to promote development of affordable housing, the state intended the findings to be required only to deny an incentive. If no action is taken the incentive is approved. There are two findings for denial of a requested incentive.

1. The first finding for denial is that there is no nexus between the requested incentive and the incentive being needed to make the units affordable. Specifically, the finding is that the incentive is not required to provide affordable housing.

2. The second finding for denial is that there are adverse impacts that cannot be mitigated without rendering the project unaffordable. The finding is that the incentive would have an adverse impact upon:
 - Health and safety; or
 - The physical environment; or
 - On any real property listed on the California Register of Historical Resources, And for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

An additional "safety valve" is provided in Section 143.0740(c) of the draft Affordable Housing Density Bonus Regulations. This section of the ordinance identifies items that can not be requested as an incentive. Section 143.0740(c) of the draft Affordable Housing Density Bonus Regulations identifies six subject areas that will not be accepted by the City of San Diego as incentives. The section reads as follows:

- (c) Items not considered incentives by the City of San Diego include, but are not limited to the following:
 - (1) A waiver of a required permit;
 - (2) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);
 - (3) A waiver of fees or dedication requirements;
 - (4) A direct financial incentive;
 - (5) A deviation from the requirements of the San Diego Building Regulations; or
 - (6) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of No Hazard to Air Navigation.

Response to Planning Commission

Additional modifications and clarifications have been incorporated into the draft regulations in response to recommendations made by the Planning Commission on October 12, 2006. Regarding parking, the parking ratio for units of 4 or more bedrooms has been reduced from the state requirement of 2.50 spaces per unit to the current citywide standard of 2.25 spaces per unit. Clarifying language has also been added to make clear that projects may take advantage of reductions in parking currently permitted for projects within the Transit Area Overlay Zone and for units designated for very low income households. Regarding the Planning Commission's concerns about the complexity of the regulations, the draft regulations have been modified to provide more clarity. The Development Services Department will also develop an Affordable Housing Density Bonus information bulletin to assist the public. The Planning Commission's direction to track projects using the density bonus program is an administrative function that can be accomplished. Attachment 4, Density Bonus Projects by Planning Areas and by Council Districts, and Attachment 5, Income and Density Bonus Project Distribution (2006), have been included in this report to provide information on distribution of affordable housing throughout the city.

000577

The Planning Commission also asked that consideration be given to modifying the regulations to allow applicants that provide the required percentage of affordable housing units to take advantage of the incentives in the regulations *without accepting density bonus units*. It is clear that the State Density Bonus Law was written to provide incentives only to projects that use the density bonus. However, there is no requirement in the legislation that requires an applicant to accept more than a single bonus unit. Regulations that provide incentives for applicants that provide a required percentage of affordable housing units, without the increased density, will be drafted as a separate ordinance for City Council consideration at a future date.

Issue Areas

A. Coastal Height Limit Overlay Zone

The proposed regulations do not permit a building to exceed the 30-foot Proposition 'D' height limit (codified in the Land Development Code as the Coastal Height Limit Overlay Zone). The Land Development Code is clear on this in two locations.

First, the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5) overrides all other regulations regarding height in the area regulated by Proposition 'D'. It states, "Notwithstanding any section to the contrary, no building or addition to a building shall be constructed with a height limit in excess of thirty feet within the Coastal Zone of the City of San Diego" (§132.0505). In layman terms this means, no matter what any other section of the Land Development Codes states with regard to permitted height, within the Coastal Height Limit Overlay Zone a building cannot be constructed if it exceeds the 30-foot height limit. An amendment to this section of the Land Development Code requires a majority vote of the voters of the City of San Diego, and no amendment is proposed.

Second, to provide additional clarity, Section 143.0740(c)(2) of the proposed ordinance states that a request to exceed the Coastal Height Limit Overlay Zone cannot be used as an incentive. Specifically, it states that "Items not considered incentives by the City of San Diego include, but are not limited to the following: ...A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5)." This provides a direct link to the regulations that codify the 30-foot Proposition 'D' height limit.

B. Height as Incentive (Outside the Coastal Height Limit Overlay Zone)

A request for an incentive that would result in an increase in height beyond the base zone limitation will first be reviewed as discussed in the section titled "Processing Incentives" beginning of page 11 of this report. After the determination of whether the project will be discretionary or ministerial has been made, the incentive for height will be reviewed. An increase in height beyond that permitted by the base zone may be requested as an incentive under the following conditions:

- ° **The applicant must first demonstrate that the project, without the additional density bonus unit(s), complies with the height limit of the base zone while providing the maximum allowable pre-density bonus units;**

- The applicant demonstrates that the additional height is necessary to make the housing units affordable;
- The height is analyzed for compliance with FAA rules;
- The additional height requested is to be only that which is needed to accommodate the additional density bonus units;
- The additional height is analyzed for adverse impacts on health & safety, the physical environment, or historical resources;
- If either of the findings for denying an incentive are made the height increase is disallowed; and
- If no finding of denial is made, then the project continues to move forward in either the discretionary or ministerial process.

C. Environmentally Sensitive Lands

All multi-family projects proposed on parcels containing environmentally sensitive lands, including those using the Affordable Housing Density Bonus Regulations, are required to apply for a Process Three Site Development Permit (appealable to the City Planning Commission) and are subject to CEQA review. Projects using the Affordable Housing Density Bonus would also be analyzed against the findings to deny a requested incentive, which include the finding related to adverse impacts to the physical environment. A project proposal on a site containing environmentally sensitive lands and using the Affordable Housing Density Bonus Regulations cannot be approved if the decisionmaker(s) cannot make the required permit findings for a Site Development Permit (Attachment 6) or if the decisionmaker(s) can make one of the findings to deny the incentive(s).

D. Waivers and Fees

The proposed regulations do not allow a waiver of required permits, dedications, or fees as an incentive. **All residential units constructed using the Affordable Housing Density Bonus regulations are required to pay all applicable fees including but not limited to FBA and DIF fees.** Section 143.0740(c) of the proposed ordinance removes from consideration as an incentive, waivers of permit requirements, waivers of fees or dedication requirements, and any request for a direct financial incentive.

E. For-Sale Moderate Income – Equity Sharing versus Deed-Restricted

State Density Bonus Law provides a density bonus and incentive(s) to applicants with projects that provide for-sale housing that is affordable to families earning a moderate income of 110 percent AML. The proposed Affordable Housing Density Bonus

Regulations for moderate for-sale housing comply with State Density Bonus Law. Table 4 identifies the restricted sales price and associated monthly payments for moderate income for-sale housing at 110 percent AMI according to household size and unit size. The issue is how to most effectively administer the moderate income for-sale affordable housing.

Should the for-sale program be administered as an equity sharing program where the first income-restricted family that purchases the home shares equity with the Housing Commission, or should the program be administered to require that the first family that purchases the home and all subsequent families must be income-restricted for a period of 55 years? The recommendation is that equity sharing should continue to be used to administrate the moderate income for-sale housing.

TABLE 4
Moderate Income For-Sale
110 Percent Area Median Income and Restricted Sale Price (2007)

Household Size	Unit Size	Income	Restricted Sale Price	Monthly Payment
One	Studio	\$ 53,450	\$ 189,313	\$ 1,137
Two	1 Bedroom	\$ 61,100	\$ 213,883	\$ 1,284
Three	2 Bedroom	\$ 68,700	\$ 238,245	\$ 1,431
Four	3 Bedroom	\$ 76,350	\$ 266,363	\$ 1,599

The San Diego Housing Commission proposes to administer the for-sale moderate-income affordable housing as is currently required in Section 142.1309 of the Inclusionary Housing Ordinance. That section provides for equity-sharing programs that share equity between the first income-restricted family that purchases the home and the San Diego Housing Commission. Administering the program in this fashion provides an incentive for a family to continue to live in the home by increasing the percentage of equity the homeowner earns over a fifteen year equity sharing timeline. Table 5 provides an example of how the equity sharing program works during year one, year seven, and year fifteen using the median condominium sales price in San Diego in May of this year. Additional benefits of equity sharing include:

- ° Providing additional funding to the San Diego Housing Commission to be used to help other income-restricted families;
- ° Generating equity that can help families with future financial needs, including funding college education;
- ° Creating an incentive to maintain and make improvements to the home; and
- ° Establishing a family's financial stability.

TABLE 5
Equity Sharing For-Sale Moderate Income*

Year One		Year Seven		Year Fifteen	
Housing Commission	Owner	Housing Commission	Owner	Housing Commission	Owner
\$ 129,255 + 85% Equity	15% Equity	\$ 129,255 + 49% Equity	51% Equity	\$ 129,255	100% Equity

* \$ 367,500 Market Price
 - \$ 238,245 Restricted Price (100% AMI)
 \$ 129,255 Housing Commission Subsidy

An alternative to the equity sharing program is to deed restrict ownership of the moderate-income for-sale units for a period of 55 years. This alternative requires that the first income-restricted family to purchase a unit and any subsequent family that purchases the same unit over a 55 year period, to sell the home only to another income-restricted family earning no more than 110% of the AMI. The benefit of deed restricting units is that it guarantees long term affordability of the unit regardless of when or if a family should relocate. At the end of the first 55 year period this program will have resulted in more housing units available to moderate-income families earning 110 percent AMI. However, there are difficulties associated with deed restricting units for a long period of time that outweigh the benefit. The following difficulties are associated with deed restricting units.

- ° There is a limited pool of income qualified families earning 110% AMI. In order to qualify, a family of four earning \$69,400 a year and paying for monthly rent, transportation costs (including car payment(s), fuel, insurance, and maintenance), and food and clothing for four, must have little to no outstanding debt and a good credit rating.
- ° Long term affordability is unattractive to mortgage lenders. Lenders are uncomfortable with issues related to foreclosure, the need to rely on the Housing Commission to make whole any losses, and the long term requirement that a unit may only be resold to income-restricted families, all over a 55 year term.
- ° A family that must relocate (for family health or work related reasons) could be forced to sell their home at a loss. Increasing interest rates and HOA fees could combine to lower the restricted sales price and create a situation where the restricted price at the time of resale is less than it was for the previous homeowner.
- ° The San Diego Housing Commission will receive no shared equity funds that could otherwise be available to assist other income-restricted families.
- ° The San Diego Housing Commission subsidy will be unavailable for 55 years. After 55 years the subsidy will be significantly devalued and less valuable to other families needing assistance.

Mayor's Recommendations and Alternatives (Attachments 1A and 1B)

There are two policy components within the regulations for which alternative policies are provided. The first policy relates to processing of incentives when the only reason for a discretionary permit is the incentive(s) requested in accordance with State Density Bonus Law. The second policy for which an alternative is provided is the city initiated amendment that would increase the base density bonus provided to projects that provide for-sale housing affordable to moderate-income households. The following provides an explanation of the two policy areas. The draft regulations in Attachment 1A represent the policies recommended by the City Planning and Community Investment Department (Mayor's recommendation). The draft regulations in Attachment 1B represent alternative policies. These two policy components are unrelated; therefore, the City Council may accept one policy from Attachment 1A and the other from Attachment 1B. Attachment 9 provides a side-by-side summary of the differences between the two policy issues and Attachment 10 provides a side-by-side comparison of the regulations.

Processing Incentives

The regulations in Attachments 1A and 1B both require discretionary permits for projects that would be subject to the discretionary and CEQA process when the requirement is not triggered only as a result of an incentive requested in accordance with State Density Bonus Law. Applicants will be required to state when a project proposes to use the Affordable Housing Density Bonus Regulations. The application will require that the applicant demonstrate that the incentive is necessary to make the housing units affordable, identify the proposed affordability levels and the percentage of affordable units, and any incentive(s) requested. Additional submittal requirements, such as financial data, may be required on a project by project basis.

Mayor's Recommendation for Processing - Attachment 1A [Sections 143.0740(d)(3-5)]

The Mayor's recommendation is that projects that provide affordable housing not be required to get a discretionary permit unless a discretionary permit would be required without the affordable housing component of the project. When an application for a project using the Affordable Housing Density Bonus Regulations is submitted it will be reviewed to determine if the project, minus the incentive(s), would require a discretionary permit. **When a discretionary permit is required, that same permit, at the same decision level, will be required and the appropriate CEQA review will occur.** The decision maker(s) will be required to make the findings of the discretionary permit in order to approve the project. The decision maker(s) will also be required to review any requested incentive(s) to determine if either of the findings to deny the incentive(s) can be made. A project cannot be approved if the decision maker(s) cannot make the findings to approve the permit, or if the decision maker(s) can make one of the findings to deny the incentive(s). There are a number of discretionary actions that will always be required due to the location of a project. Examples of discretionary actions that will always be required include Coastal Development Permits, Site Development Permits when environmentally sensitive lands or when a historic structure is present, street or right-of-way vacations, and projects located within a community plan

implementation overlay zone (CPIOZ) Type 'B'. Attachment 8 provides a complete list of discretionary permits that will always be required for projects using the Affordable Housing Density Bonus Regulations.

A project will be reviewed ministerially when, after review it is determined that the project minus the incentive(s), does not require a discretionary permit. The project will be concurrently reviewed by the San Diego Housing Commission, the City Planning and Community Investment Department, and the Development Services Department's Planning and Building Divisions. The project will be reviewed against applicable building codes (DSD Building), requirements for affordable housing agreements (SDHC), and the findings to deny a requested incentive(s) (CPCI and DSD Planning). A project can only receive a building permit when all reviewing disciplines are satisfied that the project meets all requirements. A project cannot be approved ministerially if the required findings for denial can be made.

Very few projects are anticipated to qualify for ministerial processing. First, in order to use the Affordable Housing Density Bonus Regulations, a project must propose and be able to achieve the maximum allowable density per the base zone or community plan. Existing zoning regulations related to height, parking, and environment often preclude a project from achieving the maximum allowable density. For instance, along Clairemont Mesa Boulevard, west of I-805, there are a number of existing multi-family projects that are zoned RM-3-9. This zone allows for up to 73 dwelling units per acre with a height limit of 60 feet. However, this area is subject to the Clairemont Mesa Height Limit Overlay Zone (30-foot height limit). It is not possible for a project to develop at a maximum density of 73 dwelling units per acre when it is restricted to a 30 foot height limit. A project could not request density bonus at this location through a ministerial process since it could not achieve maximum density under existing regulations. In order to use the Affordable Housing Density Bonus Regulations at this location a Process 5 Site Development Permit to exceed the 30-foot height limit (to achieve maximum density), would have to be processed in conjunction with a request for an incentive(s). Second, to be processed ministerially, a project without the proposed density bonus/incentive, must comply with all of the underlying zoning regulations, including height and setback. If any deviations would be required of the project without the density bonus/incentive then a Process 4 Planned Development Permit would have to be processed in conjunction with a request for an incentive. Third, as previously stated, there are numerous requirements to process discretionary permits for new development and multi-family housing based on locational criteria (Attachment 8) that apply to projects using the Affordable Housing Density Bonus Regulations.

Given this information, then first question might be "If the number of units anticipated to be processed ministerially is so low then why maintain a ministerial process?" However, a more relevant question is **"What message is the City sending about affordable housing if it requires an applicant who wants to build affordable housing to spend additional time and money in the discretionary process when the applicant could, based on existing zoning, build market rate housing through the ministerial process?"** Requiring a discretionary permit for projects that would not otherwise require

one will lengthen the review process an average of 6 months and increase project cost by an average of \$5,000 to \$10,000.

Alternative for Processing - Attachment 1B [Sections 143.0740(d)(3-4)]

The alternative would require that an affordable housing density bonus project always process a discretionary permit when an incentive is requested. A project would be processed at the same level of review that would normally apply if the request were not called an incentive. That is, if the requested deviation from development regulations (now called an incentive) were normally processed under a Process 2, 3, 4 or 5 level of review, then it would continue to be processed as such consistent with the City Municipal Code. No special processing would be associated with it except that the findings for approval or denial of the permit used by the decision maker in a process 2, 3, 4 or 5 would be replaced with the State Density Bonus Law findings for denial of an incentive. Maintaining the city's current processing allows for appeals, public notice, and community participation in projects that, except for a requested incentive, would be ministerial.

The criteria for approving an incentive under State Density Bonus Law are as follows:

- The applicant requests a density bonus.
- The applicant for a density bonus submits a request to the City for a specific incentive.
- The request meets the definition of what is considered an incentive under State Density Bonus Law.
- The applicant demonstrates that the waiver or modification of a development standard (the incentive) is necessary to make the housing units economically feasible.
- The incentive will result in identifiable, financially sufficient, and actual cost reductions.

The applicant is responsible for meeting all of the above criteria and where necessary burdened with proving that the criteria are satisfied. When the criteria are satisfied, the request can be approved. However, even if all of the criteria are provided to the satisfaction of the city, the City may, within its discretion, deny the incentive if either of the following written findings is made based upon substantial evidence:

1. The incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

2. The incentive would have a specific adverse impact¹, as defined in paragraph (2) of subdivision (d) of 65589.5, upon public health or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

The burden to prove that the findings for denial can be made rests with the City. In other words, the applicant is not required, at this point, to demonstrate why there are no health & safety impacts, environmental impacts or historical resource impacts. It is the city's responsibility to demonstrate that such impacts will occur. The discretion remains with the City to determine whether the applicant for the incentive has sufficiently made the findings for approval, and secondly, that even if the criteria for approval have been made, that other circumstances (as outlined above) exist warranting denial of the project. See Government Code Sections 65915(d)(3) & (e). In considering denial, the City must weigh the facts and evidence to determine whether an incentive can be granted. As stated in State Density Bonus Law, "[n]othing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources."

Moderate Income For-Sale Housing

State Density Bonus Law establishes a sliding scale of density bonus for projects that provide for-sale housing for moderate income households. The state law baseline for the sliding scale provides a 5 percent density bonus for projects that include 10 percent of a project's pre-density bonus units for moderate-income households. Attachment 3 provides a side-by-side comparison of the Mayor's recommended bonus (City) and the alternative (State).

Mayor's Recommendation for Moderate Income - Attachment 1A (Table 143-07A)

As directed by the Land Use and Housing Committee, and recommended by the Mayor, the city-initiated amendment would provide a base density bonus of 20 percent for projects providing 10 percent of the pre-density bonus units for moderate-income households. The San Diego Housing Commission initially undertook an in-house analysis to determine whether the state density bonus of 5 percent in exchange for designating 10 percent of the units as moderate income units would be an incentive to

¹ "Specific adverse impact" on public health and safety means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety." Government Code Section 65589.5.

000585

building moderate-income housing in San Diego. It was determined that the state density bonus for moderate income would not provide an incentive in San Diego given the high cost of land, increased construction costs, and the requirement to designate 10 percent of a project's units for moderate income households while receiving a density bonus of only 5 percent. More recently, the San Diego Housing Commission hired Keyser Marsten Associates, Inc. to conduct an analysis of the moderate-income density bonus to determine the density bonus needed to create an incentive for development of moderate income for-sale housing in San Diego. The report (Attachment 7) supports the Housing Commission's initial analysis.

The Keyser Marsten analysis, which is generally based on the RM-3-7 multi-dwelling unit zone, compared the incentives (profit/cost) derived from density bonuses of five percent, ten percent, fifteen percent, and twenty percent. The base line for the analysis was a multi-family development of 45 dwelling units with no density bonus. Other assumptions were that the density bonus units were two-bedroom units for a family of three earning 110 percent A.M.I. Table 3 provides a comparative breakdown of the analysis. The result of the analysis is that a density bonus of five percent or ten percent would provide no incentive, since such bonuses would result in financial losses. Density bonuses of fifteen percent and twenty percent would provide an incentive, since each would result in additional financial gain. However, the financial incentive provided by a density bonus of fifteen percent is marginal (\$3,700 per unit) and given likely future increases in construction costs would provide little to no incentive in the near future. A density bonus of twenty percent (\$10,400 per unit) is more likely to result in construction of moderate income affordable housing units in the City of San Diego.

TABLE 3
Economic Impact Analysis - Summary

	Baseline	Percent Density Bonus			
		5%	10%	15%	20%
Dwelling Units	45	47	49	51	54
Total Profit	---	(\$ 239,000)	(\$ 33,000)	\$ 187,000	\$ 564,000
Profit Per DU	---	(\$ 5,100)	(\$ 700)	\$ 3,700	\$ 10,400
% of Cost	---	- 1.4%	- 0.4%	0.5%	2.1%
% of Value	---	- 1.1%	- 0.4%	0.4%	1.7%

Alternative for Moderate Income - Attachment 1B (Table 143-07A)

The base of the density bonus scale for moderate income housing is a 5% density bonus for providing 10% of the units affordable at 110% AML. This is the requirement in State Density Bonus Law.

000586

Implementation:

The ordinance approving the amendments to these regulations will be crafted to allow implementation in those areas of the city outside the Coastal Overlay Zone 30 days after the second reading by the City Council. As required for all amendments to the City's Local Coastal Program, implementation in areas within the Coastal Overlay Zone will become effective only upon the unconditional certification of the regulations by the California Coastal Commission.

Environmental Analysis:

The City of San Diego previously prepared Environmental Impact Report No. 96-0333 for the Land Development Code. It has been determined that the proposed amendments to the Affordable Housing Density Bonus Regulations may result in significant impacts not discussed in EIR No. 96-0333. It has been determined that the proposed amendments have the potential to result in significant impacts to visual quality, transportation, and parking; and cumulative impacts to visual quality and parking.

The extent to which these potential impacts may or may not occur depends on several factors, including, but not limited to, site specific project location, surrounding natural and built characteristics, and project design. As previously stated, the findings for denying an incentive provide further reductions in the potential for impacts. An incentive(s) can be denied when it is found to have an adverse impact on the physical environment, health and safety, or historic resources. Additionally, projects using the Affordable Housing Density Bonus Regulations and processing a discretionary permit will be subject to the findings for approving a development permit and CEQA review. CEQA review will identify whether a project has an environmental impact, and if there is an impact, necessary mitigation would be considered with the project by the decisionmaker(s) as part of the project.

FISCAL CONSIDERATIONS:

The costs of processing this amendment to the City's Affordable Housing Density Bonus Regulations are shared by the City Planning and Community Investment Department, which is funded through the general fund, and the Development Services Department Code Update Section which is funded through an overhead expense in the Development Services Department's budget.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

San Diego Housing Commission - On April 8, 2005 the Housing Commission voted 4-0-0 to generally support the staff recommendation while expressing the view that the primary goal should be to provide incentives for low and very low income housing.

Land Use & Housing Committee (LU&H) - On May 11, 2005, the Committee voted to accept the proposed ordinance and directed staff to prepare the required environmental documentation for Planning Commission and City Council consideration and adoption. LU&H provided the following direction to staff:

- Answer more completely the Committee's questions regarding use of different approval process levels and differential findings for different elements of the program in order to adequately address community concerns;
- Direct the Intergovernmental Relations Department to bring state legislation affecting local housing and land use policy to the attention of LU&H for possible review and comment prior to adoption by the state or federal legislatures.
- Chart and track projects that take advantage of the density bonus program by monitoring the number of incentive(s) a project uses, the project location, and to what extent the project relies on state versus local elements of the program.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Code Monitoring Team (CMT) - On April 12, 2006, the CMT voted 6-0-1 to support staff recommendation.

Technical Advisory Committee (TAC) - On March 9, 2005 the TAC voted 7-0-0 to support the draft ordinance with four recommendations. The first was that any proposal to increase density bonus for projects that satisfy their inclusionary housing onsite be expanded to also include the regulatory incentives afforded the state density bonus categories. After further review it was determined that a density bonus for projects that satisfy their onsite inclusionary housing and any expansion of that bonus to also include the incentives would dilute the incentive of providing additional affordable housing through the density bonus regulations. The second and third recommendations were that the review process for deviations for projects requesting a density bonus be reduced from the current city-wide Process Four to a Process Three, and that a separate category of density bonus should be developed for accessible units. Projects utilizing density bonus could be entitled to up to three incentives ministerially provided no discretionary permit is otherwise required. Reducing a decision level for deviating from city-wide zoning regulations as well as addressing the need for accessible living units should be considered city-wide and not in a piecemeal fashion for only certain project types. The fourth recommendation was that the minimum density bonus for moderate income housing be increased from 5 percent to 20 percent in recognition of the high development costs in San Diego. This has been included as a city-initiated amendment.

Community Planners Committee (CPC) - On February 22, 2005, the CPC voted 11-1-0 to oppose staff recommendation and recommended that the regulations be revised to not vary from or exceed the requirements of the State Density Bonus Law. Specifically, the CPC did not support the two city-initiated amendments. The CPC recommendation to oppose the city-initiated bonuses for moderate-income for-sale units and construction of inclusionary housing onsite would likely remove both the incentive to provide housing in the moderate-income category and the incentive to construct inclusionary housing onsite. The two city-initiated amendments would result in additional affordable housing units, and in the case of the onsite building bonus, those affordable housing units would be developed more rapidly than they would through collection of in-lieu fees.

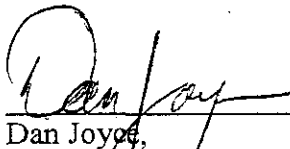
000588

KEY STAKEHOLDERS:


Key stakeholders include the building industry, organizations that advocate for increasing the city's supply of affordable housing, and community planning groups.

ALTERNATIVES:

1. Adopt only the regulations that implement the state mandated Density Bonus Law and deny the city-initiated density bonus incentive. This would be adoption of an ordinance containing the regulations from:
 - The Mayor's Recommendation for Processing Incentives (Attachment 1A), or
 - The alternative for Processing Incentives (Attachment 1B), and
 - The alternative regulations for Moderate Income For-Sale Housing (Attachment 1B).
2. Adopt the regulations that implement the state mandated Density Bonus Law and accept or modify the city-initiated density bonus incentive. This would be adoption of an ordinance containing the regulations from:
 - The Mayor's Recommendation for Processing Incentives (Attachment 1A), or
 - The alternative for Processing Incentives (Attachment 1B), and
 - The regulations for Moderate Income For-Sale Housing from the Mayor's Recommendations for Moderate Income For-Sale Housing (Attachment 1A) or the alternative regulations for Moderate Income For-Sale Housing (Attachment 1B) with or without modification.
3. Deny or modify the regulations that implement the state mandated Density Bonus Law beyond what is presented in Attachments 1A and 1B, and deny or modify the city-initiated density bonus incentive. This action could cause the regulations to be out of compliance with state law.



Dan Joyce,
Senior Planner



William Anderson, FAICP
Deputy Chief of Land Use and
Economic Development

ANDERSON/DJ

- ATTACHMENTS:
- 1A. Mayor's Recommendation - Draft Regulations for Affordable Housing Density Bonus
 - 1B. Alternative Regulations
 2. Parking for Projects Utilizing Affordable Housing Density Bonus
 3. Comparison between State Requirement and City Proposal for Moderate Income Density Bonus
 4. Density Bonus Projects by Planning Areas and by Council Districts

5. Income and Density Bonus Project Distribution (2006)
6. Site Development Permit Findings for Environmentally Sensitive Lands
7. Keyser Marsten Associates, Inc. Report *Economic Impact Analysis Proposed Density Bonus Regulations*
8. Discretionary Permits Required of Density Bonus Projects
9. Summary Comparison - Mayor's Recommendations and Alternatives
10. Differences in Regulatory Language

000591

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, BY AMENDING SECTIONS 143.0710, 143.0715, 143.0720, BY RENUMBERING AND AMENDING CURRENT SECTION 143.0730 TO 143.0725, BY CREATING A NEW SECTION 143.0730, AND BY AMENDING BY AMENDING SECTIONS 143.0740, AND REPEALING SECTIONS 143.0750 AND 143.0760; AND AMENDING CHAPTER 14, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 141.0310(B), ALL RELATING TO THE DENSITY BONUS REGULATIONS.

WHEREAS, the City of San Diego [City] is required by Section 65915 of the California Government Code [State Density Bonus Law] to provide a developer with a density bonus and other incentives for the production of affordable and senior housing units or the donation of land within a proposed development if the developer meets certain requirements [Density Bonus Regulations]; and

Whereas, the City desires to provide incentives to provide Inclusionary Housing on-site; and

WHEREAS, the City Council adopted Density Bonus Regulations Citywide on December 9, 1997, by O-18451; and

WHEREAS, the City Council proposed amendments to its Density Bonus Regulations on June 21, 1999, by O-18654, subject to the approval of the California Coastal Commission for the areas of the City within the Coastal Overlay Zone; and

WHEREAS, on November 13, 2000, the California Coastal Commission failed to approve the June 21, 1999 amendments for the areas of the City within the Coastal Overlay Zone, resulting in two different sets of Density Bonus Regulations, one effective outside of the Coastal Overlay Zone (O-18654) and one effective inside the Coastal Overlay Zone (O-18451); and

WHEREAS, the City's Density Bonus Regulations are inconsistent with recent amendments to the State Density Bonus Law; and

WHEREAS, the City desires to update its Density Bonus Regulations to ensure conformance with the State Density Bonus Law both inside and outside of the Coastal Overlay Zone; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 3, Division 7, is amended by amending Sections 143.0710, 143.0715, 143.0720, 143.0725, 143.0730, and 143.0740, and deleting Sections 143.0750 and 143.0760, to read as follows:

Article 3: Supplemental Development Regulations

Division 7: Affordable Housing Density Bonus Regulations

§143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential *density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income*, and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

§143.0715 When Affordable Housing Density Bonus Regulations Apply

This division applies to any residential *development*, located on land where current zoning allows for five or more pre-*density* bonus *dwelling units*, where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the *development* being reserved for *moderate, low, or very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land, pursuant to the State Density Bonus Law.

000593
§143.0720**Density Bonus in Exchange for Affordable Housing Units**

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which a written agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.
- (b) The *density* bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental affordable housing *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) *Low income* - At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
 - (2) *Very low income* - At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size.
 - (3) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
 - (4) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (d) A for-sale affordable housing *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) For-sale *density* bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the

000594

development shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted for assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.

- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
 - (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
 - (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
 - (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) A *density* bonus agreement for housing for senior citizens shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a *mobilehome* park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
 - (2) The *dwelling units* shall remain available for a period of at least 30 years or longer as may be required by other laws.
- (f) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (g) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of

000595

property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

§143.0725 Density Bonus Provisions

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(e), the *density* bonus shall be 20 percent.
- (b) For *development* meeting the criteria for *low income* in Section 143.0720(c)(1), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (c) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (d) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (e) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.

000596

- (f) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel is calculated based on the area of that parcel.
- (g) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income*, *low income* or *very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

§143.0730 Density Bonus in Exchange for Donation of Land

An *applicant* for a *tentative map*, *parcel map*, or residential *development* permit, may donate and transfer land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with this division and pursuant to the State Density Bonus Law.

§143.0740 Development Incentives for Affordable Housing Density Bonus Projects

The City shall process an incentive requested by an *applicant*, consistent with State Density Bonus Law and as set forth in this Section.

- (a) The *applicant* shall demonstrate that the incentive is necessary to make the housing units economically feasible.
- (b) An incentive means any of the following:
 - (1) A deviation to a *development* regulation;
 - (2) Approval of mixed use zoning in conjunction with a residential *development* provided that the commercial, office, or industrial uses:
 - (A) Reduce the cost of the residential *development*; and
 - (B) Are compatible with the proposed residential *development*; and
 - (C) Are compatible with existing or planned *development* in the area where the proposed residential *development* will be located.
 - (3) Any other incentive proposed by the *applicant*, other than those identified in Section 143.0740(c), that results in identifiable, financially sufficient, actual cost reductions.

000597

(c)

Items not considered incentives by the City of San Diego include, but are not limited to the following:

- (1) A waiver of a required permit;
 - (2) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);
 - (3) A waiver of fees or dedication requirements;
 - (4) A direct financial incentive;
 - (5) A deviation from the requirements of the City of San Diego Building Regulations;
 - (6) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of No Hazard to Air Navigation.
- (d) An incentive requested as part of a *development* meeting the requirements of Sections 143.0720(c) or 143.0720(d) shall be processed according to the following:
- (1) Upon an *applicant's* request, *development* meeting the applicable requirements of Sections 143.0720 and 143.0725 shall be entitled to incentives pursuant to Section 143.0740 unless the City makes a written *finding of denial* based upon substantial evidence, of either of the following:
 - (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
 - (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
 - (2) Granting an incentive shall not require a General Plan amendment, zoning change, or other discretionary approval.

000598

- (3) The decision process for a *development* requesting an incentive shall be the same decision process that would be required if the incentive were not a part of the project proposal.
- (4) The *development permit* requirement for a *development* requesting an incentive shall be the same *development permit* that would be required if the incentive were not a part of the project proposal.
- (5) Notwithstanding Sections 143.0740(d)(3) and (4), when a *development permit* is required, the decision to deny a requested incentive shall be made by the decision maker for the *development permit*.
- (e) The number of incentives available are identified in Table 143-07A for *low income*, Table 143-07B for *very low income*, and Table 143-07C for *moderate income* consistent with the percentage of pre-density bonus units identified in column one of each table.

Table 143-07A
Low Income Density Bonus
Rental Housing

Percent <i>Low Income</i> units	Percent <i>Density Bonus</i>	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20 – 29	35	2
≥ 30	35	3

000599

Table 143-07B
Very Low Income Density Bonus
Rental Housing

Percent <i>Very Low Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 – 14	35	2
≥ 15	35	3

Table 143-07C
Moderate Income Density Bonus
For-Sale Housing

Percent <i>Moderate Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25 – 29	35	2
≥ 30	35	3

- (f) Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:

000600

- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(4);
 - (2) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
 - (3) The additional *density* bonus or incentive requested is either:
 - (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
 - (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
 - (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (g) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c),(d), or (e) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space
 - (2) Two to three bedrooms: two onsite parking spaces
 - (3) Four and more bedrooms: two and one-quarter parking spaces
 - (4) Additional reductions to the parking ratios shall be granted for projects within a *transit area*, and for *very low income* households as follows:
 - (A) *Development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire *development*.
 - (B) *Development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling*

000601

unit that is limited to occupancy by a *very low income* household.

- (C) *Development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within a *transit area*, shall receive the combined reductions in sections 143.0740(g)(4)(A) and (B).
- (5) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

Section 2. That Chapter 14, Article 1, Division 3, is amended by amending Section 141.0310 to read as follows:

§141.0310 Housing for Senior Citizens

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing Density Bonus Regulations).
- (c) through (e) [no change]

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take

000602
effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

APPROVED: _____, City Attorney

By _____
Deputy City Attorney

000603

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, BY AMENDING SECTIONS 143.0710, 143.0715, 143.0720, BY RENUMBERING AND AMENDING CURRENT SECTION 143.0730 TO 143.0725, BY CREATING A NEW SECTION 143.0730, AND BY AMENDING BY AMENDING SECTIONS 143.0740, AND REPEALING SECTIONS 143.0750 AND 143.0760; AND AMENDING CHAPTER 14, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 141.0310(B), ALL RELATING TO THE DENSITY BONUS REGULATIONS.

WHEREAS, the City of San Diego [City] is required by Section 65915 of the California Government Code [State Density Bonus Law] to provide a developer with a density bonus and other incentives for the production of affordable and senior housing units or the donation of land within a proposed development if the developer meets certain requirements [Density Bonus Regulations]; and

Whereas, the City desires to provide incentives to provide Inclusionary Housing on-site: and

WHEREAS, the City Council adopted Density Bonus Regulations Citywide on December 9, 1997, by O-18451; and

WHEREAS, the City Council proposed amendments to its Density Bonus Regulations on June 21, 1999, by O-18654, subject to the approval of the California Coastal Commission for the areas of the City within the Coastal Overlay Zone; and

WHEREAS, on November 13, 2000, the California Coastal Commission failed to approve the June 21, 1999 amendments for the areas of the City within the Coastal Overlay Zone, resulting in two different sets of Density Bonus Regulations, one effective outside of the Coastal Overlay Zone (O-18654) and one effective inside the Coastal Overlay Zone (O-18451); and

WHEREAS, the City's Density Bonus Regulations are inconsistent with recent amendments to the State Density Bonus Law; and

WHEREAS, the City desires to update its Density Bonus Regulations to ensure conformance with the State Density Bonus Law both inside and outside of the Coastal Overlay Zone; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 3, Division 7, is amended by amending Sections 143.0710, 143.0715, 143.0720, 143.0725, 143.0730, and 143.0740, and deleting Sections 143.0750 and 143.0760, to read as follows:

Article 3: Supplemental Development Regulations

Division 7: Affordable Housing Density Bonus Regulations

§143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential *density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income*, and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

§143.0715 When Affordable Housing Density Bonus Regulations Apply

This division applies to any residential *development*, located on land where current zoning allows for five or more pre-*density* bonus *dwelling units*, where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the *development* being reserved for *moderate, low, or very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or

000605

- (b) The donation of land, in accordance with California Government Code Section 65915.

§143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which a written agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.
- (b) The *density* bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental affordable housing *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) *Low income* - At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
 - (2) *Very low income* - At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size.
 - (3) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
 - (4) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (d) A for-sale affordable housing *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:

000606

- (1) For-sale *density* bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the *development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted for assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.
 - (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
 - (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
 - (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
 - (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) A *density* bonus agreement for housing for senior citizens shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a *mobilehome* park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
 - (2) The *dwelling units* shall remain available for a period of at least 30 years or longer as may be required by other laws.
- (f) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.

000607

- (g) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

§143.0725 Density Bonus Provisions

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(e), the *density* bonus shall be 20 percent.
- (b) For *development* meeting the criteria for *low income* in Section 143.0720(c)(1), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (c) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (d) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (e) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted

000608

number of *dwelling units* may be distributed without regard to the zone boundaries.

- (f) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel is calculated based on the area of that parcel.
- (g) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income*, *low income* or *very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

§143.0730 Density Bonus in Exchange for Donation of Land

An *applicant* for a *tentative map*, *parcel map*, or residential *development* permit, may donate and transfer land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with this division and pursuant to the State Density Bonus Law.

§143.0740 Development Incentives for Affordable Housing Density Bonus Projects

The City shall process an incentive requested by an *applicant*, consistent with State Density Bonus Law and as set forth in this Section.

- (a) The *applicant* shall demonstrate that the incentive is necessary to make the housing units economically feasible.
- (b) An incentive means any of the following:
 - (1) A deviation to a *development* regulation;
 - (2) Approval of mixed use zoning in conjunction with a residential *development* provided that the commercial, office, or industrial uses:
 - (A) Reduce the cost of the residential *development*; and
 - (B) Are compatible with the proposed residential *development*; and
 - (C) Are compatible with existing or planned *development* in the area where the proposed residential *development* will be located.

-000609

- (3) Any other incentive proposed by the *applicant*, other than those identified in Section 143.0740(c), that results in identifiable, financially sufficient, actual cost reductions.
- (c) Items not considered incentives by the City of San Diego include, but are not limited to the following:
 - (1) A waiver of a required permit;
 - (2) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);
 - (3) A waiver of fees or dedication requirements;
 - (4) A direct financial incentive;
 - (5) A deviation from the requirements of the City of San Diego Building Regulations;
 - (6) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of No Hazard to Air Navigation.
- (d) An incentive requested as part of a *development* meeting the requirements of Sections 143.0720(c) or 143.0720(d) shall be processed according to the following:
 - (1) Upon an *applicant's* request, *development* meeting the applicable requirements of Sections 143.0720 and 143.0725 shall be entitled to incentives pursuant to Section 143.0740 unless the City makes a written *finding* of denial based upon substantial evidence, of either of the following:
 - (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
 - (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
 - (2) Granting an incentive shall not require a General Plan amendment zoning change, or other discretionary approval.

000610

- (3) The decision process and *development permit* for a *development* requesting an incentive shall be the same that would be required of the *development* if it were not providing affordable housing units in accordance with this division.
- (4) When a *development permit* is required, the decision on the *findings* to deny a requested incentive, in addition to the required *findings* of the *development permit*, shall be made by the decision maker for the *development permit*. Except that, notwithstanding Section 126.0504 and 126.0604 (Findings for Site Development Permit Approval and Findings for Planned Development Permit Approval), when a *development permit* is required only as a result of a requested incentive, then only a decision on the *findings* to deny the requested incentive is required to be made by the decision maker.
- (e) The number of incentives available are identified in Table 143-07A for *low income*, Table 143-07B for *very low income*, and Table 143-07C for *moderate income* consistent with the percentage of pre-density bonus units identified in column one of each table.

Table 143-07A
Low Income Density Bonus
Rental Housing

Percent <i>Low Income</i> units	Percent <i>Density Bonus</i>	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20 – 29	35	2
≥ 30	35	3

000611

Table 143-07B
Very Low Income Density Bonus
Rental Housing

Percent <i>Very Low Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 – 14	35	2
≥ 15	35	3

Table 143-07C
Moderate Income Density Bonus
For-Sale Housing

Percent <i>Moderate Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
10	5	1
11	6	1
12	7	1
13	8	1
14	9	1
15	10	1
16	11	1
17	12	1
18	13	1
19	14	1
20	15	2
21	16	2
22	17	2
23	18	2
24	19	2
25	20	2
26	21	2
27	22	2
28	23	2
29	24	2
30	25	3
31	26	3
32	27	3
33	28	3

000612

34	29	3
35	30	3
36	31	3
37	32	3
38	33	3
39	34	3
40	35	3

(f) Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:

- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(4);
- (2) The percentage of children from *low*, *very low*, or *moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
- (3) The additional *density* bonus or incentive requested is either:
 - (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
 - (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
- (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.

(g) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c),(d), or (e) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:

- (1) Zero to one bedroom: one onsite parking space
- (2) Two to three bedrooms: two onsite parking spaces
- (3) Four and more bedrooms: two and one-quarter parking spaces

000613

- (4) Additional reductions to the parking ratios shall be granted for projects within a *transit area*, and for *very low income* households as follows:
- (A) *Development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire *development*.
 - (B) *Development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
 - (C) *Development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within a *transit area*, shall receive the combined reductions in sections 143.0740(g)(4)(A) and (B).
- (5) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

Section 2. That Chapter 14, Article 1, Division 3, is amended by amending Section 141.0310 to read as follows:

§141.0310 Housing for Senior Citizens

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing Density Bonus Regulations).
- (c) through (e) [no change]

000014

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

APPROVED: _____, City Attorney

By _____
Deputy City Attorney

000615

**Parking Ratios for Projects Utilizing
Affordable Housing Density Bonus**

Unit Size	Proposed Density Bonus¹	Citywide Requirement for Multi-family	Difference
Studio	1.00	1.25 ²	-0.25
1 bdrm.	1.00	1.50 ²	-0.50
2 bdrms.	2.00	2.00	0
3 bdrms.	2.00	2.25	-0.25
4+ bdrms.	2.25 ³	2.25	0

¹ Additional decreases allowed in the Land Development Code for very-low income and Transit and Urban Village Overlay Zone would be in addition to these reductions. Also the state regulations require that tandem parking be permitted and counted toward meeting the ratios.

² Senior Housing (maximum 1 bedroom) – 1 space/unit, or 0.7 space/unit plus 1 space/employee at peak hours.

³ The state requirement is for 2.5 spaces; however it has been reduced to the citywide requirement of 2.25.

000616

**Comparison between State Requirement and City Proposal
for
Moderate Income Density Bonus**

Percent Moderate Income Units	Percent Density Bonus		Number of Incentives
	State	City	
10	5	20	1
11	6	21	1
12	7	22	1
13	8	23	1
14	9	24	1
15	10	25	1
16	11	26	1
17	12	27	1
18	13	28	1
19	14	29	1
20	15	30	1
21	16	31	1
22	17	32	1
23	18	33	1
24	19	34	1
25	20	35	2
26	21	35	2
27	22	35	2
28	23	35	2
29	24	35	2
30	25	35	2
31	26	35	2
32	27	35	2
33	28	35	2
34	29	35	2
35	30	35	3
36	31	35	3
37	32	35	3
38	33	35	3
39	34	35	3
40	35	35	3

000617

Existing Density Bonus Projects - By Planning Areas

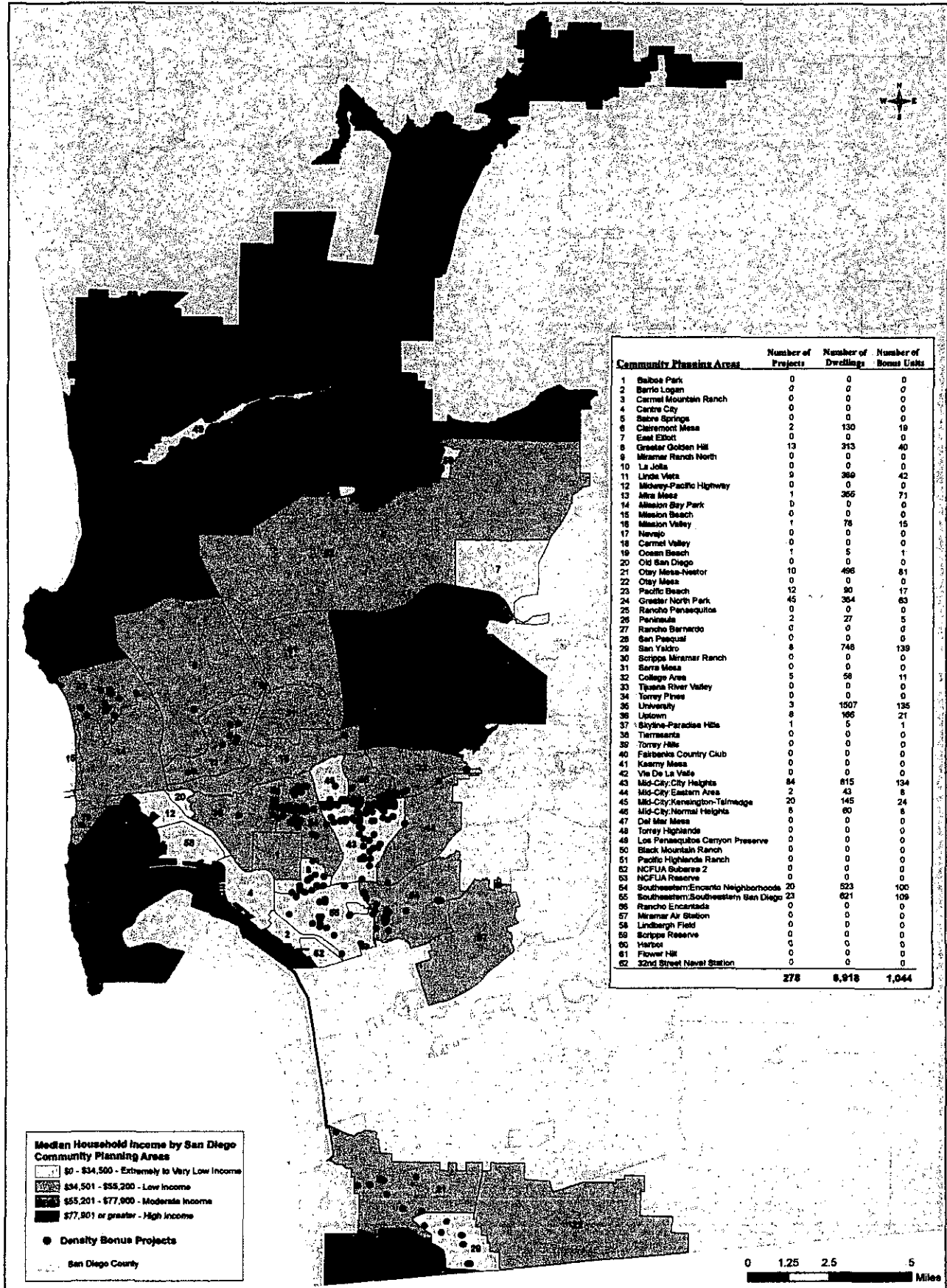
Plan Areas	Density Bonus Projects	Total Units in Project	Density Bonus Units
Barrio Logan	0	0	0
Black Mountain Ranch	0	0	0
Carmel Mountain Ranch	0	0	0
Carmel Valley	0	0	0
Clairemont Mesa	2	130	19
College Area	5	58	11
Del Mar Mesa	0	0	0
East Elliot	0	0	0
Fairbanks Country Club	0	0	0
Golden Hill	13	313	40
Kearny Mesa	0	0	0
La Jolla	0	0	0
Linda Vista	9	369	42
Mid-City	114	1,063	174
Midway-Pacific Hwy	0	0	0
Miramar Ranch North	0	0	0
Mira Mesa	1	355	71
Mission Beach	0	0	0
Mission Valley	1	78	15
Navajo	0	0	0
North Park	45	364	63
Ocean Beach	1	5	1
Old Town San Diego	0	0	0
Otay Mesa	0	0	0
Otay Mesa-Nestor	10	469	81
Pacific Beach	12	90	17
Pacific Highlands Ranch	0	0	0
Peninsula	2	27	5
Rancho Bernardo	0	0	0
Rancho Encantada	0	0	0
Rancho Peñasquitos	0	0	0
Sabre Springs	0	0	0
San Pasqual	0	0	0
San Ysidro	8	748	139
Scripps Miramar Ranch	0	0	0
Serra Mesa	0	0	0
Skyline Paradise Hills	1	5	1
Southeastern San Diego	43	1,144	209
Tierrasanta	0	0	0
Tijuana River Valley	0	0	0
Torrey Highlands	0	0	0
Torrey Hills	0	0	0
Torrey Pines	0	0	0
University	3	1,507	135
Uptown	8	166	21
Villa de la Valle	0	0	0
Total	278	6,891	1,044

**Existing Density Bonus Projects
By City Council District
October 2006**

Project Type	Council Districts								Total
	CD1	CD2	CD3	CD4	CD5	CD6	CD7	CD8	
Projects Using Density Bonus	3	15	142	43	1	12	32	30	278
Bonus Units	135	23	249	205	71	76	44	241	1,044

Income and Density Bonus Project Distribution (2006)

City of San Diego



**Site Development Permit
Required Findings
For
Environmentally Sensitive Lands**

§126.0504 Findings for Site Development Permit Approval

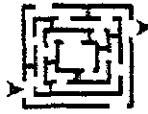
A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(b) through (n) that are applicable to the proposed *development* as specified in this section.

- (a) Findings for all Site Development Permits
 - (1) The proposed *development* will not adversely affect the applicable *land use plan*;
 - (2) The proposed *development* will not be detrimental to the public health, safety, and welfare; and
 - (3) The proposed *development* will comply with the applicable regulations of the Land Development Code.
- (b) Supplemental Findings--Environmentally Sensitive Lands

A Site Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

 - (1) The site is physically suitable for the design and siting of the proposed *development* and the *development* will result in minimum disturbance to *environmentally sensitive lands*;
 - (2) The proposed *development* will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, *flood* hazards, or fire hazards;
 - (3) The proposed *development* will be sited and designed to prevent adverse impacts on any adjacent *environmentally sensitive lands*;
 - (4) The proposed *development* will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan;
 - (5) The proposed *development* will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and
 - (6) The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed *development*.

000621



ATTACHMENT 7

KEYSER MARSTON ASSOCIATES
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

ADVISORS IN:
REAL ESTATE
REDEVELOPMENT
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

MEMORANDUM

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
ROBERT J. WETMORE

LOS ANGELES
CALVIN E. HOLLIS, II
KATHLEEN H. HEAD
JAMES A. RAHE
PAUL C. ANDERSON
GREGORY D. SOO-HOO

SAN DIEGO
GERALD M. TRIMBLE
PAUL C. MARRA

To: Ms. Amy Benjamin, Program Analyst
San Diego Housing Commission

From: KEYSER MARSTON ASSOCIATES, INC.

Date: July 24, 2007

Subject: Economic Impact Analysis
Affordable Housing Density Bonus Regulations

I. INTRODUCTION

A. Objective

Per your request, Keyser Marston Associates, Inc. (KMA) has undertaken an economic impact analysis of a proposed amendment to the City of San Diego's (City's) affordable housing density bonus ordinance.

The State of California requires cities to grant density bonuses to residential developments if a portion of the development is restricted to specific affordability levels. The City is considering amending their density bonus ordinance to increase the density bonus for moderate for-sale housing from the State-mandated minimum of 5% to 20%, provided that 10% of total pre-density units are affordable to moderate-income households.

The San Diego Housing Commission (Commission) requested that KMA evaluate the economic impact of various levels of increase in the density bonus for moderate-income for-sale housing.

000622 To: Ms. Amy Benjamin, Program Analyst
 Subject: Economic Impact Analysis
 Affordable Housing Density Bonus Regulations

B. Report Organization

This report is organized as follows:

- Section II presents KMA's key findings.
- Section III presents the KMA method of analysis.
- Section IV specifies the limiting conditions pertaining to this report.
- Data tables and technical analyses are presented in the attachments.

II. KEY FINDINGS

A. Economic Impact Analysis of Alternative Density Bonus Scenarios

Description of Development Scenarios Tested

As part of the KMA economic analysis, KMA developed a base case example for a for-sale multi-family market-rate residential development. The base case example was used as a prototype on which to test the impact of various density bonus scenarios. The following table summarizes the various density bonus scenarios tested:

	Percent Moderate- Income	Density Bonus	Density (Units/Acre)	Number of Units		
				Affordable	Market-Rate	Total
Base Case	0%	0%	45.0	0	45	45
Scenario 1	10%	5%	47.3	5	42	47
Scenario 2	10%	10%	49.5	5	44	49
Scenario 3	10%	15%	51.8	5	46	51
Scenario 4	10%	20%	54.0	5	49	54

For each scenario, KMA assumed 10% of pre-bonus units (5 units) are affordable to moderate-income households. The State of California Density Bonus Law (California Government Code Section 65915) allows the maximum moderate-income sale price to be calculated based on an income limit of 110% of Area Median Income (AMI). The

To: Ms. Amy Benjamin, Program Analyst
 Subject: Economic Impact Analysis
 Affordable Housing Density Bonus Regulations

KMA economic analysis, however, assumed a maximum moderate-income sales price at 100% AMI, consistent with parameters set forth in the City of San Diego Inclusionary Housing Ordinance for affordable for-sale housing.

Based on the foregoing, KMA estimated the maximum sales price for a two bedroom moderate-income unit at 100% AMI to be \$183,000.

The KMA economic analysis is reflective of a generic development in an unspecified location. Therefore, the KMA analysis does not evaluate the impact of concessions or incentives which are also available to multi-family residential developers if at least 10% of pre-bonus units are affordable to moderate-income households.

Developer Profit Under Alternative Density Bonus Scenarios

As shown in the attached Summary Table and summarized below, the impact of allowing only the State-mandated minimum density bonus of 5% is estimated to reduce the developer's profit by 1.1% of project value. KMA found that as the density bonus increased, developer profit experienced a marginal to small increase. As such, the granting of a 20% density bonus, as proposed by the City, is estimated to increase the developer profit by 1.7% of project value.

	Percent Moderate-Income	Density Bonus	Indicated Developer Profit (% of Project Value)	Impact Relative to Base Case	
				% of Value	Per Unit
Base Case	0%	0%	7.6%	N/A	N/A
Scenario 1	10%	5%	6.5%	(1.1%)	(\$5,100)
Scenario 2	10%	10%	7.3%	(0.4%)	(\$700)
Scenario 3	10%	15%	8.0%	0.4%	\$3,700
Scenario 4	10%	20%	9.3%	1.7%	\$10,400

The KMA estimate of economic impact does not include other considerations such as:

- The potential increase in construction costs due to change in construction type or the need for additional parking; and

July 24, 2007

Page 4

To: Ms. Amy Benjamin, Program Analyst
Subject: Economic Impact Analysis
Affordable Housing Density Bonus Regulations

000624

- Additional risks incurred by the developer due to the obligation to qualify moderate-income homebuyers.

These considerations may further affect the feasibility of multi-family for-sale developments using the moderate-income density bonus.

B. Feasibility of the Moderate-Income Density Bonus

It is the KMA finding that the moderate-income density bonus program as defined in the State of California Density Bonus Law is not sufficient to encourage San Diego developers of market-rate multi-family for-sale residential developments to include moderate-income units. The KMA finding is based on the following:

- State Density Bonus Law limits the number of market-rate units developed regardless of the amount of additional density granted.
- Each moderate-income unit requires financial assistance in addition to the "free land" provided by the density bonus.
- Market-rate developers are likely to perceive payment of the City of San Diego inclusionary housing in-lieu fee as the least risky and most certain course of action.

These factors are discussed in further detail below.

State Density Bonus Law Sliding Scale

State Density Bonus Law allows developments to qualify for a density bonus based on a sliding scale. The sliding scale allows for density to increase from a minimum of 5% for a development with 10% moderate-income units, to a maximum of 35% for a development with 40% moderate-income units.

The following table presents an illustrative example of the sliding scale used by State Density Bonus Law. For purposes of clarity, the example assumes a development with a base case maximum density of 100 units.

July 24, 2007

Page 5

To: Ms. Amy Benjamin, Program Analyst
 Subject: Economic Impact Analysis
 Affordable Housing Density Bonus Regulations

000625

Percent Moderate-Income	State Density Bonus	Number of Units		
		Market-Rate	Affordable	Total
0%	0%	100	0	100
10%	5%	95	10	105
15%	10%	95	15	110
20%	15%	95	20	115
25%	20%	95	25	120
30%	25%	95	30	125
35%	30%	95	35	130
40%	35%	95	40	135

As shown above, regardless of the increased density allowed, the number of market-rate units permitted within a development remains unchanged at 95 units. As such, when considering whether or not to apply for a density bonus, the developer faces two choices:

- (1) Develop 100 market-rate units and pay the current City of San Diego inclusionary housing in-lieu fee of \$7.31 per square foot (SF); or
- (2) Develop 95 market-rate units and develop between 10 and 40 moderate-income units.

Financial Assistance Required for Moderate-Income Units

Developers in San Diego County contemplating building moderate-income units must consider that the moderate-income price restrictions fall well below the cost to produce a multi-family residential unit, even before considering the cost of land. As indicated above, the KMA economic analysis estimates the maximum price for a two-bedroom unit for a household at 100% AMI to be \$183,000. KMA estimates that the cost to develop that same unit is \$313,000, exclusive of land cost. As shown below, the difference between \$313,000 and \$183,000 reflects the required financial assistance needed for each moderate-income unit developed:

Maximum Unit Price – 100% AMI	\$183,000
(Less) Development Costs Per Unit (excluding land)	(\$313,000)
Financial Assistance Required per Moderate-Income Unit (in addition to free land)	\$130,000

To: Ms. Amy Benjamin, Program Analyst
Subject: Economic Impact Analysis
Affordable Housing Density Bonus Regulations

July 24, 2007

Page 6

000626

Therefore, if a developer chooses to request a density bonus, they potentially lose the opportunity to develop five market-rate units as well as experience a financial loss of \$130,000 on each moderate-income unit. This analysis assumes that the developer does not derive any marginal cost savings as a result of the larger project.

The financial loss associated with the moderate-income density bonus in State Density Bonus Law is confirmed by the KMA economic analysis. The KMA analysis found that a density bonus of 5% to 10% resulted in a reduction in developer return, while a density bonus of 15% to 20% resulted in a marginal to small increase in return.

Additional Considerations

There are a number of issues requiring further consideration by a developer contemplating the use of the moderate-income density bonus. These issues include:

- The potential for a disproportionate increase in construction costs due to change in construction type and/or the need for additional parking.
- Additional risks incurred by the developer due to the obligation to qualify moderate-income homebuyers.

As a result of these additional considerations, an effective density bonus program will likely need to generate a slightly higher return to the developer than the base case in order to incentivize developers to use the program.

As indicated above, KMA did not evaluate the impact of concessions or incentives which are available to multi-family residential developments using a moderate-income density bonus. These incentives and concessions may offset the economic impact of the additional considerations noted above.

III. METHOD OF ANALYSIS

The key inputs and assumptions used in the KMA economic analysis are as follows:

Table 1 – Project Description

Table 1 provides a description of each of the scenarios tested. Key assumptions used in preparing the Base Case Scenario include:

To: Ms. Amy Benjamin, Program Analyst
 Subject: Economic Impact Analysis
 Affordable Housing Density Bonus Regulations

July 24, 2007

Page 7

000627

Site Area	1.0 Acre
Allowable Density	45 units per acre
Construction Type	Type V – wood frame stacked flats over podium parking
Number of Units	45 market-rate units
Average Unit Size	1,000 SF
Parking Ratio	2.0 spaces per unit

Table 2 – Development Costs

Table 2 identifies the development cost assumptions used for each of the density bonus scenarios. Key assumptions used by KMA in estimating development costs are as follows:

Acquisition Costs	\$50 per SF site area
Parking	\$25,000 per space
Shell Construction	\$130 per SF gross building area
Indirect Costs	28%-33% of direct costs
Financing Costs	11%-12% of direct costs

Table 3 – Estimate of Affordable Price

Table 3 calculates the maximum unit price for a two bedroom unit at 100% AMI. Key assumptions used in determining the maximum price include:

Maximum household income at 100% AMI	\$62,450
Income allocation to housing	35%
Property tax rate	1.15%
HOA dues	\$3,600 per year
Mortgage interest rate	7.0%
Down payment	5.0%

Table 4 – Project Value / Indicated Developer Profit

Table 4 presents an estimate of gross sales proceeds and resulting developer profit for each scenario. Project value was calculated assuming moderate-income units priced at the maximum unit price of \$183,000 and market-rate units priced at \$425 per square foot, or \$425,000 per unit.

July 24, 2007

Page 8

To: Ms. Amy Benjamin, Program Analyst
Subject: Economic Impact Analysis
Affordable Housing Density Bonus Regulations

000628

Developer profit was estimated based on the difference between gross sales proceeds less the sum of total development costs and cost of sale.

IV. LIMITING CONDITIONS

1. Keyser Marston Associates, Inc. (KMA) has made extensive efforts to confirm the accuracy and timeliness of the information contained in this document. Such information was compiled from a variety of sources deemed to be reliable including state and local government, planning agencies, and other third parties. Although KMA believes all information in this document is correct, it does not guarantee the accuracy of such and assumes no responsibility for inaccuracies in the information provided by third parties. Further, no guarantee is made as to the possible effect on development of current or future federal, state, or local legislation including environmental or ecological matters.
2. The accompanying projections and analyses are based on estimates and assumptions which were developed using currently available economic data, project specific data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize and unanticipated events and circumstances may occur. Such changes are likely to be material to the projections and conclusions herein and, if they occur, require review or revision of this document.
3. The analysis assumes that neither the local nor national economy will experience a major recession. If an unforeseen change occurs in the economy, the conclusions contained herein may no longer be valid.
4. The findings are based on economic rather than political considerations. Therefore, they should be construed neither as a representation nor opinion that government approvals for development can be secured.
5. Development opportunities are assumed to be achievable during the specified time frame. A change in development schedule requires that the conclusions contained herein be reviewed for validity.
6. The analysis, opinions, recommendations and conclusions of this document are KMA's informed judgment based on market and economic conditions as of the date of this report. Due to the volatility of market conditions and complex dynamics influencing the economic conditions of the building and development industry,

July 24, 2007

Page 9

To: Ms. Amy Benjamin, Program Analyst
Subject: Economic Impact Analysis
Affordable Housing Density Bonus Regulations

000629

conclusions and recommended actions contained herein should not be relied upon as sole input for final business decisions regarding current and future development and planning.

7. Any estimates of development costs, capitalization rates, income and/or expense projections are based on the best available project-specific data as well as the experiences of similar projects. They are not intended to be projections of the future for the specific project. No warranty or representation is made that any of the estimates or projections will actually materialize.

attachments

000631

ATTACHMENT 7

Economic Impact Analysis
Proposed Density Bonus Regulations

San Diego Housing Commission

Keyser Marston Associates, Inc.

May 23, 2007

SUMMARY TABLE

ECONOMIC IMPACT ANALYSIS - PROPOSED DENSITY BONUS REGULATIONS
SAN DIEGO HOUSING COMMISSION

000632

	Base Case	Scenario 1 5% Density Bonus	Scenario 2 10% Density Bonus	Scenario 3 15% Density Bonus	Scenario 4 20% Density Bonus
I. Project Description					
Site Size (SF)	43,560 SF	43,560 SF	43,560 SF	43,560 SF	43,560 SF
Density (Units/Acre)	45.0 Units/Acre	47.3 Units/Acre	49.5 Units/Acre	51.8 Units/Acre	54.0 Units/Acre
Affordable Units	0 Units	5 Units	5 Units	5 Units	5 Units
Market-Rate Units	45 Units	42 Units	44 Units	46 Units	49 Units
Total Units	45 Units	47 Units	49 Units	51 Units	54 Units
II. Indicated Developer Profit					
% of Cost	8.5%	7.2%	8.1%	9.0%	10.6%
% of Value	7.6%	6.5%	7.3%	8.0%	9.3%
III. Economic Impact Relative to Base Case					
Per Unit		(\$5,100)	(\$700)	\$3,700	\$10,400
% of Cost	n/a	-1.4%	-0.4%	0.5%	2.1%
% of Value		-1.1%	-0.4%	0.4%	1.7%

000633

TABLE 1

PROJECT DESCRIPTION
ECONOMIC IMPACT ANALYSIS - PROPOSED DENSITY BONUS REGULATIONS
SAN DIEGO HOUSING COMMISSION

	Base Case Scenario			Scenario 1 5% Density Bonus			Scenario 2 10% Density Bonus		
I. Site Area	43,560 SF	1.00 Acres		43,560 SF	1.00 Acres		43,560 SF	1.00 Acres	
II. Project Description	Type V Stacked Flats over Podium Parking			Type V Stacked Flats over Podium Parking			Type V Stacked Flats over Podium Parking		
III. Allowable Density	45.0 Units/Acre			47.3 Units/Acre			49.5 Units/Acre		
IV. Number of Units/Unit Mix									
Condominiums - Affordable	0 Units	0%	800 SF	5 Units	11%	800 SF	5 Units	10%	800 SF
Condominiums - Market-Rate	<u>45</u> Units	<u>100%</u>	<u>1,000</u> SF	<u>42</u> Units	<u>89%</u>	<u>1,000</u> SF	<u>44</u> Units	<u>90%</u>	<u>1,000</u> SF
Total/Average	45 Units	100%	1,000 SF	47 Units	100%	979 SF	49 Units	100%	980 SF
V. Gross Building Area									
Residential Area	45,000 SF	85%		46,000 SF	85%		48,000 SF	85%	
Common Area/Circulation	<u>7,900</u> SF	<u>15%</u>		<u>8,100</u> SF	<u>15%</u>		<u>8,500</u> SF	<u>15%</u>	
Total Residential Area	52,900 SF	100%		54,100 SF	100%		56,500 SF	100%	
Floor Area Ratio (FAR)	1.2			1.2			1.3		
VI. Parking									
<u>Residential Parking</u>									
Parking Ratio	2.0 Spaces/Unit			2.0 Spaces/Unit			2.0 Spaces/Unit		
Number of Spaces	90 Spaces			94 Spaces			98 Spaces		

000634

TABLE 1 (CONT'D.)

PROJECT DESCRIPTION
ECONOMIC IMPACT ANALYSIS - PROPOSED DENSITY BONUS REGULATIONS
SAN DIEGO HOUSING COMMISSION

	Scenario 3 15% Density Bonus			Scenario 4 20% Density Bonus		
I. Site Area	43,560 SF	1.00	SF	43,560 SF	1.00	Acres
II. Project Description	Type V Stacked Flats over Podium Parking			Type V Stacked Flats over Podium Parking		
III. Allowable Density	51.8 Units/Acre			54.0 Units/Acre		
IV. Number of Units/Unit Mix						
Condominiums - Affordable	5 Units	10%	800 SF	5 Units	9%	800 SF
Condominiums - Market-Rate	<u>46</u> Units	<u>90%</u>	<u>1,000</u> SF	<u>49</u> Units	<u>91%</u>	<u>1,000</u> SF
Total/Average	51 Units	100%	980 SF	54 Units	100%	981 SF
V. Gross Building Area						
Residential Area	50,000 SF	85%		53,000 SF	85%	
Common Area/Circulation	<u>8,800</u> SF	<u>15%</u>		<u>9,000</u> SF	<u>15%</u>	
Total Residential Area	58,800 SF	100%		62,000 SF	100%	
Floor Area Ratio (FAR)	1.3			1.4		
VI. Parking						
<u>Residential Parking</u>						
Parking Ratio	2.0 Spaces/Unit			2.0 Spaces/Unit		
Number of Spaces	102 Spaces			108 Spaces		

TABLE 2

DEVELOPMENT COSTS
ECONOMIC IMPACT ANALYSIS - PROPOSED DENSITY BONUS REGULATIONS
SAN DIEGO HOUSING COMMISSION

	Base Case Scenario			Scenario 1 5% Density Bonus			Scenario 2 10% Density Bonus		
	Totals	Per Unit	Comments	Totals	Per Unit	Comments	Totals	Per Unit	Comments
I. Direct Costs (1)									
Off-Site Improvements	\$0	\$0	\$0 Per SF Site Area	\$0	\$0	\$0 Per SF Site Area	\$0	\$0	\$0 Per SF Site Area
On-Sites/Landscaping	\$436,000	\$9,700	\$10 Per SF Site Area	\$436,000	\$9,300	\$10 Per SF Site Area	\$436,000	\$8,898	\$10 Per SF Site Area
Parking	\$2,250,000	\$50,000	\$25,000 Per Space	\$2,350,000	\$50,000	\$25,000 Per Space	\$2,450,000	\$50,000	\$25,000 Per Space
Shell Construction	\$6,877,000	\$152,800	\$130 Per SF GBA	\$7,033,000	\$149,600	\$130 Per SF GBA	\$7,345,000	\$149,898	\$130 Per SF GBA
FF&E/Amenities	\$225,000	\$5,000	Allowance	\$235,000	\$5,000	Allowance	\$245,000	\$5,000	Allowance
Contingency	\$489,000	\$10,900	5.0% of Directs	\$503,000	\$10,700	5.0% of Directs	\$524,000	\$10,694	5.0% of Directs
Total Direct Costs	\$10,277,000	\$228,400	\$194 Per SF GBA	\$10,557,000	\$224,600	\$195 Per SF GBA	\$11,000,000	\$224,490	\$195 Per SF GBA
II. Indirect Costs									
Architecture & Engineering	\$514,000	\$11,400	5.0% of Directs	\$528,000	\$11,200	5.0% of Directs	\$550,000	\$11,224	5.0% of Directs
Permits & Fees (2)	\$794,000	\$17,600	\$15 Per SF GBA	\$812,000	\$17,300	\$15 Per SF GBA	\$848,000	\$17,306	\$15 Per SF GBA
Inclusionary In-Lieu Fee	\$387,000	\$8,600	\$7.31 Per SF GBA	\$0	\$0	\$0 Per SF GBA	\$0	\$0	\$0 Per SF GBA
Legal & Accounting	\$103,000	\$2,300	1.0% of Directs	\$106,000	\$2,300	1.0% of Directs	\$110,000	\$2,245	1.0% of Directs
Taxes & Insurance	\$574,000	\$12,800	3.0% of Value	\$563,000	\$12,000	3.0% of Value	\$588,000	\$12,000	3.0% of Value
Developer Fee	\$308,000	\$6,800	3.0% of Directs	\$317,000	\$6,700	3.0% of Directs	\$330,000	\$6,735	3.0% of Directs
Marketing/Sales	\$574,000	\$12,800	3.0% of Value	\$563,000	\$12,000	3.0% of Value	\$588,000	\$12,000	3.0% of Value
Contingency	\$163,000	\$3,600	5.0% of Indirects	\$144,000	\$3,100	5.0% of Indirects	\$151,000	\$3,082	5.0% of Indirects
Total Indirect Costs	\$3,417,000	\$75,900	33.2% of Directs	\$3,033,000	\$64,500	28.7% of Directs	\$3,165,000	\$64,592	28.8% of Directs
III. Financing Costs (3)									
Loan Fees	\$137,000	\$3,000	1.3% of Directs	\$136,000	\$2,900	1.3% of Directs	\$141,000	\$2,878	1.3% of Directs
Interest During Construction	\$862,000	\$19,200	8.4% of Directs	\$856,000	\$18,200	8.1% of Directs	\$887,000	\$18,102	8.1% of Directs
Interest During Sales	\$191,000	\$4,200	1.9% of Directs	\$190,000	\$4,000	1.8% of Directs	\$197,000	\$4,020	1.8% of Directs
HOA Dues on Unsold Units	\$32,000	\$700	0.3% of Directs	\$34,000	\$700	0.3% of Directs	\$35,000	\$714	0.3% of Directs
Total Financing Costs	\$1,222,000	\$27,200	11.9% of Directs	\$1,216,000	\$25,900	11.5% of Directs	\$1,260,000	\$25,714	11.5% of Directs
IV. Total Development Costs w/o Land	\$14,916,000	\$331,500	\$282 Per SF GBA	\$14,806,000	\$315,000	\$274 Per SF GBA	\$15,425,000	\$314,798	\$273 Per SF GBA
V. Acquisition Costs	\$2,178,000	\$48,400	\$50 Per SF Site Area	\$2,178,000	\$46,300	\$50 Per SF Site Area	\$2,178,000	\$44,449	\$50 Per SF Site Area
VI. Total Development Costs w/Land	\$17,094,000	\$379,900	\$323 Per SF GBA	\$16,984,000	\$361,400	\$314 Per SF GBA	\$17,603,000	\$359,245	\$312 Per SF GBA

(1) Does not assume payment of prevailing wages.

(2) Estimate. Not verified by KMA or San Diego Housing Commission (SDHC).

(3) Financing costs estimated assuming interest rate of 7.0%, construction period of 18 months, and homeowners association (HOA) dues of \$300 per month.

000636

TABLE 2 (CONT'D.)

DEVELOPMENT COSTS
ECONOMIC IMPACT ANALYSIS - PROPOSED DENSITY BONUS REGULATIONS
SAN DIEGO HOUSING COMMISSION

	Scenario 3 15% Density Bonus			Scenario 4 20% Density Bonus		
	Totals	Per Unit	Comments	Totals	Per Unit	Comments
I. Direct Costs (1)						
Off-Site Improvements	\$0	\$0	\$0 Per SF Site Area	\$0	\$0	\$0 Per SF Site Area
On-Sites/Landscaping	\$436,000	\$8,549	\$10 Per SF Site Area	\$436,000	\$8,100	\$10 Per SF Site Area
Parking	\$2,550,000	\$50,000	\$25,000 Per Space	\$2,700,000	\$50,000	\$25,000 Per Space
Shell Construction	\$7,644,000	\$149,882	\$130 Per SF GBA	\$8,060,000	\$149,300	\$130 Per SF GBA
FF&E/Amenities	\$255,000	\$5,000	Allowance	\$270,000	\$5,000	Allowance
Contingency	\$544,000	\$10,667	5.0% of Directs	\$573,000	\$10,600	5.0% of Directs
Total Direct Costs	\$11,429,000	\$224,098	\$194 Per SF GBA	\$12,039,000	\$222,900	\$194 Per SF GBA
II. Indirect Costs						
Architecture & Engineering	\$571,000	\$11,196	5.0% of Directs	\$602,000	\$11,100	5.0% of Directs
Permits & Fees (2)	\$882,000	\$17,294	\$15 Per SF GBA	\$930,000	\$17,200	\$15 Per SF GBA
Inclusionary In-Lieu Fee	\$0	\$0	\$0 Per SF GBA	\$0	\$0	\$0 Per SF GBA
Legal & Accounting	\$114,000	\$2,235	1.0% of Directs	\$120,000	\$2,200	1.0% of Directs
Taxes & Insurance	\$614,000	\$12,039	3.0% of Value	\$652,000	\$12,100	3.0% of Value
Developer Fee	\$343,000	\$6,725	3.0% of Directs	\$361,000	\$6,700	3.0% of Directs
Marketing/Sales	\$614,000	\$12,039	3.0% of Value	\$652,000	\$12,100	3.0% of Value
Contingency	\$157,000	\$3,078	5.0% of Indirects	\$168,000	\$3,100	5.0% of Indirects
Total Indirect Costs	\$3,295,000	\$64,608	28.8% of Directs	\$3,483,000	\$64,500	28.9% of Directs
III. Financing Costs (3)						
Loan Fees	\$146,000	\$2,863	1.3% of Directs	\$153,000	\$2,800	1.3% of Directs
Interest During Construction	\$918,000	\$18,000	8.0% of Directs	\$961,000	\$17,800	8.0% of Directs
Interest During Sales	\$204,000	\$4,000	1.8% of Directs	\$214,000	\$4,000	1.8% of Directs
HOA Dues on Unsold Units	\$37,000	\$725	0.3% of Directs	\$39,000	\$700	0.3% of Directs
Total Financing Costs	\$1,305,000	\$25,588	11.4% of Directs	\$1,367,000	\$25,300	11.4% of Directs
IV. Total Development Costs w/o Land	\$16,029,000	\$314,294	\$273 Per SF GBA	\$16,889,000	\$312,800	\$272 Per SF GBA
V. Acquisition Costs	\$2,178,000	\$42,706	\$50 Per SF Site Area	\$2,178,000	\$40,300	\$50 Per SF Site Area
VI. Total Development Costs w/Land	\$18,207,000	\$357,000	\$310 Per SF GBA	\$19,067,000	\$353,100	\$308 Per SF GBA

(1) Does not assume payment of prevailing wages.

(2) Estimate. Not verified by KMA or San Diego Housing Commission (SDHC).

(3) Financing costs estimated assuming interest rate of 7.0%, construction period of 18 months, and homeowners association (HOA) dues of \$300 per month.

000637

TABLE 3

ESTIMATE OF AFFORDABLE PRICE
 ECONOMIC IMPACT ANALYSIS - PROPOSED DENSITY BONUS REGULATIONS
 SAN DIEGO HOUSING COMMISSION

Number of Bedrooms	2
Percent of AMI	100.0%
Assumed Family Size	3.0
Maximum Household Income (Rounded) (1)	\$62,450
Income Allocation to Housing	35.0%
Annual Amount Available for Housing	\$21,858
Annual Homeowner Association (HOA) Dues (2)	\$3,600
Tax Rate	1.15%
Annual Taxes (3)	\$4,370
Available for Mortgage	\$13,888
Interest Rate	7.00%
Down Payment	5.00%
Closing Costs	0.00%
Supportable Mortgage	\$173,950
Add: Down Payment	\$9,150
(Less) Closing Costs	\$0
Maximum Unit Price (Rounded)	\$183,000

(1) Per San Diego Housing Commission (SDHC) 2007 Income Limits.

(2) Gross estimate.

(3) Property tax assessment based on market value of actual unit. Assumes market value of \$380,000/unit or \$475/SF.

Source: State of California Department of Housing and Community Development, San Diego Housing Commission, California Redevelopment Law H&SC § 50052.5.

000638

TABLE 4

PROJECT VALUE / INDICATED DEVELOPER PROFIT
ECONOMIC IMPACT ANALYSIS - PROPOSED DENSITY BONUS REGULATIONS
SAN DIEGO HOUSING COMMISSION

	Base Case Scenario					Scenario 1 5% Density Bonus					Scenario 2 10% Density Bonus				
	Average Unit Size	# of Units	Price Per SF	Price Per Unit	Total Sales	Average Unit Size	# of Units	Price Per SF	Price Per Unit	Total Sales	Average Unit Size	# of Units	Price Per SF	Price Per Unit	Total Sales
I. Project Value															
<u>Condominium Residential Proceeds</u>															
Affordable Units	800 SF	0	\$0	\$0	\$0	800 SF	5	\$229	\$183,000	\$915,000	800 SF	5	\$229	\$183,000	\$915,000
Market-Rate Units	1,000 SF	45	\$425	\$425,000	\$19,125,000	1,000 SF	42	\$425	\$425,000	\$17,850,000	1,000 SF	44	\$425	\$425,000	\$18,700,000
Total/Average	1,000 SF	45	\$425	\$425,000	\$19,125,000	979 SF	47	\$408	\$399,255	\$18,765,000	980 SF	49	\$409	\$400,306	\$19,615,000
Total Gross Sales Proceeds					\$19,125,000					\$18,765,000					\$19,615,000
II. Indicated Developer Profit															
Total Gross Sales Proceeds					\$19,125,000					\$18,765,000					\$19,615,000
(Less) Cost of Sale @			3.0% of Value		(\$574,000)			3.0% of Value		(\$563,000)			3.0% of Value		(\$588,000)
(Less) Total Development Costs w/Land					(\$17,094,000)					(\$16,984,000)					(\$17,603,000)
Total Indicated Developer Profit					\$1,457,000					\$1,218,000					\$1,424,000
% of Cost					8.5%					7.2%					8.1%
% of Value					7.6%					6.5%					7.3%
III. Economic Impact Relative to Base Case															
Indicated Profit - Density Bonus Scenarios										\$1,218,000					\$1,424,000
(Less) Developer Profit - Base Case										(\$1,457,000)					(\$1,457,000)
Total Economic Impact Relative to Base Case										(\$239,000)					(\$33,000)
Per Unit										(\$5,100)					(\$700)
% of Cost										-1.4%					-0.4%
% of Value										-1.1%					-0.4%

000639

TABLE 4 (CONT'D.)

PROJECT VALUE / INDICATED DEVELOPER PROFIT
ECONOMIC IMPACT ANALYSIS - PROPOSED DENSITY BONUS REGULATIONS
SAN DIEGO HOUSING COMMISSION

	Scenario 3 15% Density Bonus					Scenario 4 20% Density Bonus				
	Average Unit Size	# of Units	Price Per SF	Price Per Unit	Total Sales	Average Unit Size	# of Units	Price Per SF	Price Per Unit	Total Sales
I. Project Value										
<u>Condominium Residential Proceeds</u>										
Affordable Units	800 SF	5	\$229	\$183,000	\$915,000	800 SF	5	\$229	\$183,000	\$915,000
Market-Rate Units	1,000 SF	46	\$425	\$425,000	\$19,550,000	1,000 SF	49	\$425	\$425,000	\$20,825,000
Total/Average	980 SF	51	\$409	\$401,275	\$20,465,000	981 SF	54	\$410	\$402,593	\$21,740,000
					\$20,465,000					\$21,740,000
II. Indicated Developer Profit										
Total Gross Sales Proceeds					\$20,465,000					\$21,740,000
(Less) Cost of Sale @			3.0% of Value		(\$614,000)			3.0% of Value		(\$652,000)
(Less) Total Development Costs w/Land					(\$18,207,000)					(\$19,067,000)
Total Indicated Developer Profit					\$1,644,000					\$2,021,000
% of Cost					9.0%					10.6%
% of Value					8.0%					9.3%
III. Economic Impact Relative to Base Case										
Indicated Profit - Density Bonus Scenarios					\$1,644,000					\$2,021,000
(Less) Developer Profit - Base Case					(\$1,457,000)					(\$1,457,000)
Total Economic Impact Relative to Base Case					\$187,000					\$564,000
Per Unit					\$3,700					\$10,400
% of Cost					0.5%					2.1%
% of Value					0.4%					1.7%

**Discretionary Permits that are
Required for Density Bonus Projects**

LOCATION	APPLICABILITY	PERMIT*
Coastal Overlay Zone	All new development	Coastal Development Permit
Citywide	ESL on site of multi-family project	Site Development Permit
Citywide	Multi-family on consolidated lots exceeding thresholds in Table 126-05A	Site Development Permit
Citywide - CPIOZ	Projects in Type "B" CPIOZ per Community Plan	Site Development Permit
Mission Trails Design District	All multi-family development	Site Development Permit
Urban Village Overlay Zone	All new development	Site Development Permit
Historic Districts	Residential & commercial development	Site Development Permit
Citywide	When historic resources (other than a district or structure) are present	Site Development Permit
Midway-Pacific Corridor	All mixed-use development	Planned Development Permit
Miramar Ranch	All multi-family	Planned Development Permit
Torrey Pines	All multi-family	Planned Development Permit
Sabre Springs	Selected areas of Moderate and Low Moderate Designations	Planned Development Permit
Mira Mesa	Rezoning and subdivisions	Planned Development Permit
Sabre Springs	Majority of multi-family land use designations	Planned Development Permit
Scripps Miramar Ranch	Residential development in Areas C and E	Planned Development Permit
Barrio Logan PDO	New development	Coastal Development Permit
Carmel Valley PDO	Multi-family development	Site Development Permit
Cass Street PDO	New development	Coastal Development Permit
Central Urbanized PDO	Residential development in commercial zones along University Ave. and El Cajon Blvd. that are not mixed use	Planned Development Permit
Centre City PDO	New development over 1,000 gross square feet (prior to incentive)	Centre City Development Permit
Golden Hill PDO	All multi-family and Mixed use per Table 158-02A	Golden Hill Development Permit
La Jolla PDO	New Development	Coastal Development Permit

**Discretionary Permits that are
Required for Density Bonus Projects**

LOCATION	APPLICABILITY	PERMIT*
La Jolla Shores PDO	New Development	La Jolla Shores Development Permit
Mid City PDO	All multi-family and mixed use per Table 1512-02A	Site Development Permit
Mission Beach PDO	New Development	Coastal Development Permit
Mission Valley PDO	Projects in the Multi-Use Zone, in the San Diego River District; in the Hillside Subdistrict north of Friars Road, or with above or below ground structured parking	Mission Valley Development Permit
Old Town San Diego PDO	New Development	Planned Development Permit
San Ysidro PDO	Mixed Use projects	San Ysidro Development Permit
Southeastern San Diego PDO	Multi-family development of four or more units (prior to added density)	Southeastern San Diego Development Permit
West Lewis Street PDO	Projects Greater than 1,000 s.f. (prior to incentive)	Site Development Permit

* More than one discretionary permit may be required of a project proposing to use the Affordable Housing Density Bonus Regulations.

Summary Comparison – Mayor’s Recommendation and Alternatives
(Attachments 1A and 1B)

Mayor’s Recommendations Attachment 1A	Alternatives Attachment 1B
Processing Incentives	
<ul style="list-style-type: none"> • The <u>decision process</u> for a development requesting an affordable housing incentive shall be the same decision process that would be required if the incentive were not a part of the project proposal. • The <u>development permit</u> requirement for a development requesting an affordable housing incentive shall be the same development permit that would be required <u>if the incentive were not a part</u> of the project proposal. • If an affordable housing density bonus project without the requested incentive would be ministerial then the project with the incentive is ministerial. 	<ul style="list-style-type: none"> • The <u>decision process</u> for a development requesting an affordable housing incentive shall be the same decision process that would be required if the incentive were requested without using the affordable housing density bonus regulations. • The <u>development permit</u> requirement for a development requesting an affordable housing incentive shall be the same development permit requirement that would be required <u>if the incentive were requested without</u> using the affordable housing density bonus regulations. • If an affordable housing density bonus project without the requested incentive would be ministerial then the project with the incentive is required to follow the discretionary process that would otherwise be required by the incentive if it were not associated with a request for density bonus. The process would include noticing, community planning group recommendation, and associated public hearing. Except that the standard of review is limited to the findings for denial of an incentive and not the findings of the permit.
Moderate Income For-Sale Housing	
<p>The base of the density bonus scale for moderate income housing is a 20% density bonus for providing 10% of the units affordable at 110% AMI. This is a city initiated proposal.</p>	<p>The base of the density bonus scale for moderate income housing is a 5% density bonus for providing 10% of the units affordable at 110% AMI. This is the requirement in State Density Bonus Law.</p>

000642

There are two policy issues within the proposed Affordable Housing Density Bonus Regulations for which an alternative is provided for City Council consideration. This attachment provides a comparison between the regulatory language that would implement the Mayor's recommended policies for the Affordable Housing Density Bonus Regulations and the language that would implement the alternative policies for the Affordable Housing Density Bonus Regulations.

The two areas of policy difference are:

1. Processing for requested incentives when a discretionary permit is not otherwise required. See differences between regulatory languages in Section 143.0740(d) below.
2. Amount of density bonus offered for Moderate Income For-Sale Housing. See differences in Table 143-07C below.

Article 3: Supplemental Development Regulations

Division 7: Affordable Housing Density Bonus Regulations

§143.0710 through 143.0730 [No Change]

§143.0740 Development Incentives for Affordable Housing Density Bonus Projects

(a) – (c) [No Change]

(d) An incentive requested as part of a *development* meeting the requirements of Sections 143.0720(c) or 143.0720(d) shall be processed according to the following:

- (1) Upon an *applicant's* request, *development* meeting the applicable requirements of Sections 143.0720 and 143.0725 shall be entitled to incentives pursuant to Section 143.0740 unless the City makes a written *finding* of denial based upon substantial evidence, of either of the following:

- (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
- (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.

Mayor's Recommendation (Attachment 1A)	Alternative (Attachment 1B)
<p>(3) The decision process for a <i>development</i> requesting an incentive shall be the same decision process that would be required if the incentive were not a part of the project proposal.</p> <p>(4) The <i>development permit</i> requirement for a <i>development</i> requesting an incentive shall be the same <i>development permit</i> that would be required if the incentive were not a part of the project proposal.</p> <p>(5) Notwithstanding Sections 143.0740(d)(3) and (4), when a <i>development permit</i> is required, the decision to deny a requested incentive shall be made by the decision maker for the <i>development permit</i>.</p>	<p>(3) The decision process and <i>development permit</i> for a <i>development</i> requesting an incentive shall be the same that would be required of the <i>development</i> if it were not providing affordable housing units in accordance with this division.</p> <p>(4) When a <i>development permit</i> is required, the decision on the <i>findings</i> to deny a requested incentive, in addition to the required <i>findings</i> of the <i>development permit</i>, shall be made by the decision maker for the <i>development permit</i>. Except that, notwithstanding Section 126.0504 and 126.0604 (Findings for Site Development Permit Approval and Findings for Planned Development Permit Approval), when a <i>development permit</i> is required only as a result of a requested incentive, then only a decision on the <i>findings</i> to deny the requested incentive is required to be made by the decision maker.</p>

(e) [No Change]

Table 143-07A [No Change]

Table 143.07B [No Change]

Table 143-07C
Moderate Income Density Bonus
For-Sale Housing

Percent <i>Moderate Income</i> Units	Percent <i>Density Bonus</i>		Number of Incentives
	Mayor's Recommendation	Alternative	
10	20	5	1
11	21	6	1
12	22	7	1
13	23	8	1
14	24	9	1
15	25	10	1
16	26	11	1
17	27	12	1
18	28	13	1
19	29	14	1
20	30	15	2
21	31	16	2
22	32	17	2
23	33	18	2
24	34	19	2
25	35	20	2
26	35	21	2
27	35	22	2
28	35	23	2
29	35	24	2
30	35	25	3
31	35	26	3
32	35	27	3
33	35	28	3
34	35	29	3
35	35	30	3
36	35	31	3
37	35	32	3
38	35	33	3
39	35	34	3
40	35	35	3

(f) - (g) [No Change]

§141.0310 [No Change]

NOTICE OF DETERMINATION

000647

TO: X Recorder/County Clerk
P.O. Box 1750, MS A33
San Diego, CA 92101-2422

FROM: Development Services Department, City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101

X Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Project Number: 63422

State Clearinghouse Number: 96081056

Project Title: Land Development Code Revisions: Affordable Housing Density Bonus Regulations

Project Location: The entire City of San Diego in the County of San Diego.

Project Description: Amendments to Chapter 14, Article 3, Division 7, Sections §143.0710 through §143.075, and Chapter 12, Article 6, Division 7 of the Municipal Code. Section §126.0708, and Section 141.0310. The regulations are intended to apply city-wide; however, until approved by the Coastal Commission, only the existing State Density Bonus Law would apply in the Coastal Zone.

Project Applicant: City of San Diego Planning Department, 202 C Street, San Diego, CA, 92101. Contact: Betsy McCullough (619)236-6879.

This is to advise that the **San Diego City Council** on _____ approved the above described project and made the following determinations:

1. The project in its approved form X will, _____ will not, have a significant effect on the environment.
2. X A Supplement to Environmental Impact Report No. 96-0333 was prepared for this project and certified by the San Diego City Council pursuant to the provisions of CEQA.
3. Mitigation measures _____ were, X were not, made a condition of the approval of the project.
4. (EIR only) Findings X were, _____ were not, made pursuant to CEQA Guidelines Section 15091.
5. (EIR only) A Statement of Overriding Considerations X was, _____ was not, adopted for this project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Land Development Review Division, Fifth Floor, City Operations Building, 1222 First Avenue, San Diego, CA 92101.

Analyst: Mirrasoul

Telephone: (619) 446-5380

Filed by: _____
Signature

Title

Reference: California Public Resources Code, Sections 21108 and 21152.



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>
Environmental Review and Permitting
1416 Ninth Street, Suite 1260
Sacramento, California 95814

**CEQA Filing Fee No Effect Determination Form**

Applicant Name: City of San Diego Planning Dept. **Date Submitted:** 1/24/07

Applicant Address: 202 C Street, San Diego, CA 92101

Project Name: Land Development Code Revisions: Affordable Housing Density Bonus Regulations

CEQA Lead Agency: City of San Diego

CEQA Document Type: Supplement to EIR No. 96-0333

SCH Number and/or local agency ID number: 96081056

Project Location: Entire City of San Diego

Brief Project Description:

Amendments to Chapter 14, Article 3, Division 7, Sections §143.0710 through §143.0750, and Chapter 12, Article 6, Division 7 of the Municipal Code, Section §126.0708, and Section 141.0310. The regulations are intended to apply city-wide; however, until approved by the Coastal Commission, only the existing State Density Bonus Law would apply in the Coastal Zone.

Determination: Based on a review of the Project as proposed, the Department of Fish and Game has determined that for purposes of the assessment of CEQA filing fees [F&G Code 711.4(c)] the project has no potential effect on fish, wildlife and habitat and the project as described does not require payment of a CEQA filing fee. This determination does not in any way imply that the project is exempt from CEQA and does not determine the significance of any potential project effects evaluated pursuant to CEQA.

Please retain this original determination for your records; you are required to file a copy of this determination with the County Clerk after your project is approved and at the time of filing of the CEQA lead agency's Notice of Determination (NOD). If you do not file a copy of this determination with the County Clerk at the time of filing of the NOD, the appropriate CEQA filing fee will be due and payable.

Without a valid No Effect Determination Form or proof of fee payment, the project will not be operative, vested, or final and any local permits issued for the project will be invalid, pursuant to Fish and Game Code Section 711.4(c)(3).

DFG Approval By: Elizabeth Lucas Date: 01-24-07

Title: Staff Environmental Scientist

000651



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: September 29, 2006 REPORT NO. PC-06-264

ATTENTION: Planning Commission
Agenda of October 5, 2006

SUBJECT: AFFORDABLE HOUSING DENSITY BONUS REGULATIONS

REFERENCE: Manager's Report Nos. 03-237, 04-127, 05-028, 05-107

SUMMARY

Issue - Should the Planning Commission recommend to the City Council approval of amendments to the Land Development Code related to the City's Affordable Housing Density Bonus Regulations (Chapter 12, Article 6, Division 7; Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7)?

Staff Recommendations -

1. Recommend that the City Council CERTIFY Supplement to Environmental Impact Report No. 96-0333 (Project No. 63422) and adopt the Findings and Statement of Overriding Considerations.
2. Recommend to the City Council approval of amendments to the Land Development Code and the City's Local Coastal Program related to the City's Affordable Housing Density Bonus Regulations (Chapter 12, Article 6, Division 7; Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7).

Other Recommendations - Community Planners Committee (CPC) - On February 23, 2005, the CPC voted 11-1 to oppose the staff recommendation and to revise the City's draft Affordable Housing Density Bonus Regulations to not vary from or exceed the requirements of the state required Density Bonus Program. Specifically, the CPC did not support the two City-initiated proposals. The first City-initiated proposal is to provide a 10 percent density bonus incentive for providing required inclusionary housing onsite

rather than paying an in-lieu fee. The second is to increase the state-required density bonus for providing moderate income housing from 5 percent to 20 percent.

Technical Advisory Committee (TAC) - On March 9, 2005 the TAC voted 7-0 to support the staff recommendation with the following additions:

1. Projects that qualify for the proposed 10 percent bonus by satisfying their inclusionary housing requirement onsite be afforded the regulatory incentives available to projects that qualify for state density bonus.
2. The review process for incentives/deviations should be Process Three or less.
3. A new local density bonus category is added for accessible units that meet American National Standards Institute A 117.1 standards.
4. The moderate income condominium category should have the more generous bonus recommended by staff.

Planning Commission - On March 17, 2005, the Planning Commission held a workshop on the draft regulations. A number of questions were asked but no specific direction was given.

Housing Commission - On April 8, 2005, the Housing Commission voted 4-0 to generally support the staff recommendation while expressing the view that the primary goal should be to provide incentives for low- and very-low income housing.

Land Use & Housing Committee (LU&H) - On May 11, 2005, the Committee voted to accept the proposed ordinance and directed staff to prepare the required environmental documentation for Planning Commission and City Council consideration and adoption. LU&H provided the following direction to staff:

1. Answer more completely the Committee's questions regarding use of different approval process levels and differential findings for different elements of the program in order to adequately address community concerns.
2. Direct the Intergovernmental Relations Department to bring state legislation affecting local housing and land use policy to the attention of the Committee for possible review and comment prior to adoption by the state or federal legislatures.
3. Chart and track which projects take advantage of the density bonus program, the number of incentives each uses, where the projects are located, and to what extent they rely on state versus local elements of the program.

Code Monitoring Team (CMT) - On April, 2006, the City of San Diego's (City's) CMT voted to recommend approval of the proposed revisions to the City's Affordable Housing Density Bonus Regulations by a vote of 6-0-1.

Environmental Review - A Supplement to Environmental Impact Report No. 96-0333 has been prepared for the project in accordance with the California Environmental Quality Act (CEQA).

Fiscal Impact - None with this action.

Housing Impact - The intent of these revisions is to provide incentives to increase the supply of housing affordable to very-low and low-income renters, seniors, and moderate income homeowners in accordance with state law.

BACKGROUND

State law requires cities in California to grant density bonuses and development incentives to residential projects when restrictions are implemented to maintain specified affordability levels. San Diego's Municipal Code includes local regulations intended to fulfill this state requirement.

On January 1, 2003, Assembly Bill (AB) 1866 became effective. The revised bill was intended to increase use of the state density bonus program and increase the supply of affordable housing in the state. Passage of this bill resulted in San Diego's density bonus regulations becoming outdated and partially out of compliance with state law. Therefore, on December 3, 2003, the City Council's Land Use and Housing Committee directed the Planning Department and the City Attorney to make necessary revisions to the City's Affordable Housing Density Bonus Regulations and forward them to the Community Planners Committee, Housing Commission, and Planning Commission for input and recommendations and then to the City Council for adoption.

A draft of that ordinance was prepared for presentation to City Council. However, the presentation to the City Council was postponed when it became apparent that the state density bonus regulations were again being significantly modified at the state level. On January 1, 2005, the second major revision to the state density bonus law in two years, Senate Bill (SB) 1818, became effective. Further, only a few months later, Senate Bill 435, which provided clarifying language related to SB 1818, was approved.

DISCUSSION

The purpose of this draft of the Affordable Housing Density Bonus Regulations is to bring the City's regulations into conformance with state density bonus law. State density bonus law requires that the density bonus be granted ministerially. A project may be granted up to three incentives through Process One based upon the percentage of affordable units in a project and the level of affordability. The incentives may take the form of deviations from development regulations. State law also directs that an applicant proposing a project that uses density bonus, in and of itself, cannot be required to process a land use plan or zoning ordinance amendment. However, applicants requesting deviations to regulations, or changes to land use plans or zoning beyond those permitted through density bonus shall be required to comply with current Land Development Code processes.

The draft Affordable Housing Density Bonus Regulations in Attachment 1 reflect all of the amendments made to state density bonus law. The following is a summary of significant changes to state density bonus law that have been enacted.

- A new density bonus category was added for moderate income common interest for-sale condominiums and planned unit developments.
- Upon resale of a moderate-income unit developed under the density bonus law, the local government shall recapture both the initial subsidy and a proportionate share of appreciation, unless it conflicts with another funding source or law.
- A new density bonus category was added for projects that donate land to the City and make at least 10 percent of units affordable to very-low-income families.
- The maximum state density bonus was increased from 25 percent to 35 percent. A sliding scale of density bonus was established from 5 percent to 35 percent depending on the proportion of units that will be affordable and at what affordability level they will be provided.
- Rental projects that receive a density bonus must retain a specified number of units at specified affordability levels for 30 years.
- The City must offer up to three incentives to all qualifying projects that request incentives. The number of incentives a project is eligible for depends upon the number (percentage) of affordable units being provided and the income group being targeted.
- The City must offer an additional incentive to qualifying projects that include onsite day care facilities meeting specified conditions.
- Applicants may choose incentives. The City must grant the request unless specific findings are made that granting the request would not be necessary to provide the affordable units or that the requested deviation would have an adverse impact on health, safety, the physical environment, or property listed on the California Register of Historical Resources.
- The revised state law limits parking standards that a city can place on projects seeking a density bonus. Furthermore, a development using density bonus may use tandem or uncovered parking to meet this requirement.
- Density bonus for senior developments also applies to senior mobilehome parks.

On June 9, 2004, LU&H recommended adding a new City category of projects eligible for a density bonus. The intent would be to create an incentive that would encourage developers to satisfy their inclusionary housing requirements onsite, rather than option to pay the in-lieu fee.

On February 2, 2005, Planning Department and Housing Commission staff returned to LU&H with the draft Affordable Housing Density Bonus Regulations. Staff was directed to seek input from a number of City advisory committees including the Community Planners Committee, the Technical Advisory Committee, the Housing Commission, and the Planning Commission. Staff sought input and recommendations from each of these bodies (see "Other Recommendations" starting on page 1 of this report).

The recommendations made by the CPC and TAC have been analyzed. Staff believes that the CPC recommendation to oppose the City-initiated bonuses for moderate-income for-sale units and construction of inclusionary housing onsite would likely remove both the incentive to provide housing in the moderate-income category and the incentive to construct inclusionary housing onsite. Staff believes the two City-initiated amendments to the state density bonus law would result in additional affordable housing units, and in the case of the onsite building bonus, those affordable housing unit would be developed more rapidly than they would through collection of in-lieu fees.

The TAC made four recommendations, some which staff believes would expand the scope beyond the goal of fostering more affordable housing construction. The first recommendation, that the onsite density bonus also include the regulatory incentives afforded the state density bonus categories, is not recommended because it would dilute the incentive of providing additional affordable housing (beyond that required by the Inclusionary Housing Regulations) through the density bonus regulations. The second and third recommendations, that a review process for deviations be a Process Three and that a separate category of density bonus be developed for accessible units, has a twofold response. First, projects utilizing density bonus would be entitled to up to three deviations/incentives ministerially, beyond those three, the project would be subject to the findings and requirements of the Planned Development Permit which is a Process Four. Second the lowering of a decision level for deviating from citywide zoning regulations and addressing the need for accessible living units should be considered citywide and not in a piecemeal fashion for only for certain project types. The fourth recommendation, that the density bonus for moderate income housing be increased has been incorporated into the draft regulations. A City-initiated amendment proposes the minimum density bonus for providing moderate income for-sale housing be increased from 5 percent to 20 percent.

Staff returned to LU&H on May 11, 2005, to request that the Committee recommend the proposed amendments to the Planning Commission and City Council. LU&H provided direction to staff in three areas: clarify the findings and processes, become involved in state housing and land use legislation early on, and chart and track projects that utilize the density bonus regulations.

Regarding the findings and processes, state law mandates that qualifying projects are entitled to up to three incentives, to be granted ministerially, unless findings are made that the incentives are not needed to make the project affordable or that the project would result in specified adverse impacts. Projects requesting to deviate from regulations beyond the three ministerial incentives allowed through density bonus would be required to process a Planned Development Permit

(Process Four) as would other projects requesting to deviate from development regulations. The second and third recommendations (early involvement in state housing and land use legislation, and charting and tracking projects using the density bonus program) are operational and administrative functions that can be accomplished.

Staff has incorporated two City-initiated amendments into the draft Affordable Housing Density Bonus Regulations that are in addition to those required by the state. At the direction of LU&H staff has included a density bonus incentive for projects that satisfy their required inclusionary housing requirement onsite rather than through payment of an in-lieu fee. The "onsite building bonus" would provide a 10 percent density bonus, to be approved ministerially, to applicants that agree to satisfy their inclusionary housing requirement onsite. An applicant could apply for both the state density bonus and the onsite building bonus up to a maximum allowable density bonus of 35 percent as allowed per state law, without processing a rezone or community plan amendment to increase the density on a site.

The second City-initiated amendment would increase the density bonus for projects that provide 10 percent of the onsite units to moderate income homebuyers within common interest developments. The Housing Commission and the City Planning and Community Investment Department believe that the state's minimum requirement a of 5 percent density bonus provided for moderate-income ownership units in the state legislation is not sufficient to offset the cost of providing affordable units in San Diego due to the region's high costs and is therefore not a viable incentive. Since cities do have the option of offering a more generous density bonus ratio than that required by the state, it is recommended that in San Diego, the basic density bonus for moderate-income projects be increased to 20 percent. An applicant could apply for this bonus and the state density bonus up to a maximum allowable density bonus of 35 percent as allowed per state law, without processing a rezone or community plan amendment to increase the density on a site.

Due to the complexity of the state density bonus regulations, the Housing Commission has drafted a procedures manual. This manual will be for the use of potential density bonus applicants to explain the procedures and requirements for each of the categories. The manual contains information regarding application procedures, agreements, restrictions, affordability requirements, development incentives, rents and for-sale prices, information on the interaction/relationship between the proposed onsite building bonus and state density bonus provisions, and Housing Commission fees for administering the program.

The ordinance approving the amendments to these regulations will be crafted to allow implementation in those areas of the City outside the Coastal Overlay Zone 30 days after the second reading at City Council. Implementation in areas within the Coastal Overlay Zone will become effective upon the unconditional certification of the regulations by the California Coastal Commission.

CONCLUSION

Staff recommends approval of the proposed draft Affordable Housing Density Bonus Regulations in accordance with state law with the addition of the two City-initiated density bonus incentives.

ALTERNATIVES

1. Adopt the state-mandated density bonus regulations and deny or modify the City-initiated density bonus incentives.
2. Deny and/or modify the state mandated provisions of the draft Affordable Housing Density Bonus Regulations. This action would cause the regulations to be out of compliance with state law.

Respectfully submitted,

Dan Joyce
Senior Planner
Development Services

William Anderson, FAICP
Director
Planning and Community Investment

ANDERSON/DJ/ah

Attachment: Draft Affordable Housing Density Bonus Regulations

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

10-05-06

DRAFT

Article 3: Supplemental Development Regulations**Division 7: Affordable Housing Density Bonus Regulations***(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§143.0710 Purpose of Affordable Housing Density Bonus Regulations**

The purpose of these regulations is to provide increased residential *density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income*, and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

§143.0715 When Affordable Housing Density Bonus Regulations Apply

This division applies to any residential *development* of five or more pre-*density* bonus *dwelling units* where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the development being reserved for *moderate, low, or very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land.

§143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which an agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.

DRAFT

- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) Housing for senior citizens - The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
 - (2) Affordable housing units -
 - (A) *Low income* - At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
 - (B) *Very low income* - At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size.
 - (C) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
 - (3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (d) A for-sale *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) For-sale density bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the *development*

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

10-05-06

DRAFT

shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.

- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission.
- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (f) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

§143.0725 Density Bonus Provisions

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the *density* bonus shall be 20 percent.

DRAFT

- (b) For *development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that *development* shall be entitled to a *density* bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-*density* bonus units. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent.
- (c) For development meeting the criteria for *low income* in Section 143.0720(c)(2)(A), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (d) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2)(B), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (e) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (f) Where the zone requires that each *lot* be occupied by no more than one *dwelling unit*, the *development* requires a Planned Development Permit.
- (g) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (h) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel is calculated based on the area of that parcel.

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

10-05-06

DRAFT

- (i) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income*, *low income* or *very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

§143.0730 Density Bonus in Exchange for Donation of Land

An *applicant* for a *tentative map*, *parcel map*, or residential *development* permit, may donate land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets the following criteria:

- (a) The site is at least 1 acre or of sufficient size to permit *development* of at least 40 affordable *dwelling units*;
- (b) The General Plan designation is appropriate for residential *development*;
- (c) The site is zoned to allow for the appropriate residential *development*;
- (d) The site is or will be served by public facilities and infrastructure adequate to serve the *dwelling units*; and
- (e) The land to be transferred is within the boundary of the proposed *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed *development*.

§143.0740 Development Incentives for Affordable Housing Density Bonus Projects

- (a) The City shall grant an incentive requested by an applicant, to the extent allowed by State law and as set forth in this Section.
 - (1) An incentive means any of the following:
 - (A) A deviation to a *development* regulation;
 - (B) Approval of a mixed use *development* in conjunction with the residential development if the commercial, office, or industrial uses will reduce the cost of the residential development; and if the mixed use *development* is compatible with the residential *development*; and if the mixed use *development* is compatible with the applicable land use plan;

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

10-05-06

DRAFT

- (C) Any other regulatory deviation proposed by the applicant, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.
- (2) The granting of an incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval, notwithstanding Planned Development Permit Procedures (Chapter 12, Article 6, Division 6).
- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.
- (4) Upon an *applicant's* request, *development* meeting the requirements of Sections 143.0720(c) or (d) shall be entitled to incentives pursuant to Section 143.0740(b) unless the City makes a written finding based upon substantial evidence, of either of the following:
 - (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
 - (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
- (b) The following incentives shall be provided through Process One consistent with Tables 143-07A, 143-07B, and 143-07C:
 - (1) One incentive for *development* that includes any of the following:
 - (A) At least 10 percent of the total units for *low income* households;
 - (B) At least 5 percent of the total units for *very low income* households; or
 - (C) At least 10 percent of the total units for *moderate income* households in a common interest *development*.

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

10-05-06

DRAFT

- (2) Two incentives for *development* that includes any of the following:
- (A) At least 20 percent of the total units for *low income* households;
 - (B) At least 10 percent of the total units for *very low income* households; or
 - (C) At least 20 percent of the total units for *moderate income* households in a common interest *development*.
- (3) Three incentives for *development* that includes any of the following:
- (A) At least 30 percent of the total units for *low income* households;
 - (B) At least 15 percent of the total units for *very low income* households; or
 - (C) At least 30 percent of the total units for *moderate income* households in a common interest *development*.

Low Income Density Bonus
Table 143-07A

Percent <i>Low Income</i> units	Percent Density Bonus	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20 – 29	35	2
≥ 30	35	3

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

10-05-06

DRAFT

Very Low Income Density Bonus
Table 143-07B

Percent <i>Very Low Income</i> Units	Percent Density Bonus	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 - 14	35	2
≥ 15	35	3

Moderate Income Density Bonus
Table 143-07C

Percent <i>Moderate Income</i> Units	Percent Density Bonus	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25 - 29	35	2
≥ 30	35	3

- (c) Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

10-05-06

DRAFT

- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(3);
 - (2) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
 - (3) The additional density bonus or incentive requested is either:
 - (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
 - (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
 - (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (d) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c) or (d), the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space
 - (2) Two to three bedrooms: two onsite parking spaces
 - (3) Four and more bedrooms: two and one-half parking spaces
 - (4) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking.

§143.0750 Development in the Coastal Overlay Zone

- (a) *Development* within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

10-05-06

DRAFT

- (b) The City may consider deviations from the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1 when requested by an *applicant* as an incentive for providing affordable housing consistent with this division, provided that the *findings* in Section 126.0708(b)(2) can be made.

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

10-05-06

DRAFT

126.0708 Findings for Coastal Development Permit Approval

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

- (a) [no change]
- (b) Supplemental Findings - Environmentally Sensitive Lands Within the Coastal Overlay Zone
 - (1) When a deviation is requested from the Environmentally Sensitive Lands Regulations because the *applicant* contends that application of the regulations would result in denial of all economically viable use, the following shall apply:
 - (A) Any *development permit* in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* and the supplemental *findings* for deviations from the Environmentally Sensitive Lands Regulations in addition to the *findings* for the applicable *development permit(s)*:
 - (i) Based on the economic information provided by the *applicant*, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the *applicant's* property;
 - (ii) Application of the Environmentally Sensitive Lands Regulations would interfere with the *applicant's* reasonable investment-backed expectations;
 - (iii) The use proposed by the *applicant* is consistent with the applicable zoning;
 - (iv) The use and project design, siting, and size are the minimum necessary to provide the *applicant* with an economically viable use of the *premises*; and

DRAFT

- (v) The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program with the exception of the provision for which the deviation is requested.
 - (B) The Coastal Development Permit shall include a determination of economically viable use.
 - (C) The public hearing on the Coastal Development Permit shall address the economically viable use determination.
 - (D) The *findings* adopted by the decision making authority shall identify the evidence supporting the *findings*.
- (2) A deviation from the Environmentally Sensitive Lands Regulations when requested as an incentive for providing affordable housing pursuant to the Affordable Housing Density Bonus Regulations in Chapter 14, Article 3, Division 7, may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0708(a)(1) through (4):
 - (A) Feasible alternatives to the requested incentive and the effect of such alternatives on coastal resources have been considered;
 - (B) Granting the incentive or alternative will not adversely affect coastal resources.

§141.0310 Housing for Senior Citizens

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing *Density* Bonus Regulations).
- (c) through (e) [no change]



Land Development
Review Division
(619) 446-5460

SUPPLEMENT to an ENVIRONMENTAL IMPACT REPORT

Project No. 63422
Supplement to EIR No. 96-0333
SCH No. 96081056

SUBJECT: LAND DEVELOPMENT CODE REVISIONS: Affordable Housing Density Bonus Regulations: Amendments to Chapter 14, Article 3, Division 7, Sections §143.0710 through §143.075, and Chapter 12, Article 6, Division 7 of the Municipal Code, Section §126.0708, and Section 141.0310. The regulations are intended to apply city-wide; however, until unconditionally certified by the Coastal Commission, only the existing State Density Bonus Law would apply in the Coastal Zone.

Applicant: City of San Diego City Planning and Community Investment Department.

July 2007 Update

Minor changes have been made to the previously proposed Land Development Code amendments (see attached) and the environmental document. The changes to the environmental document do not affect the analysis or conclusions of the document, and are shown in standard strikeout/underline format.

May 2007 Update

This revised and recirculated environmental document reflects recent changes to the previously proposed Land Development Code amendments and provides additional clarification regarding the implementation of these amendments.

I. PROJECT DESCRIPTION

The existing and revised density bonus regulations apply to any residential development of five or more pre-density bonus dwelling units where an applicant proposes density beyond that permitted by the existing zone. The applicant must either reserve a portion of the units for moderate, low, or very-low income households, or senior citizens or donate land.

The majority of the proposed Land Development Code (LDC) revisions are intended to implement requirements mandated by State Assembly Bill (AB) 1866, State Senate Bills (SB) 1818 (January 2005) and SB 435, and facilitate the development of affordable housing for very-low and low-income renters, seniors, and moderate income residents within the City of San Diego.

In general, recently adopted state law requires the City to provide up to three regulatory incentives or benefits to applicants for a traditional density bonus based on the percentage of affordable units included as part of the development proposal; it provides additional incentives or concessions to qualifying projects that include on-site day care facilities; it expands the density bonus entitlement option to all common interest developments (condominium, condominium conversions, and planned unit developments) which provide for-sale units restricted to moderate income residents; it adds a density bonus category for projects that include the donation of land to the City; it

increases the maximum density bonus from 25 percent to 35 percent with a sliding scale of density bonus from 5 percent to 35 percent depending upon the proportion of affordable units; it limits the parking standards required for density bonus projects and allows the use of tandem parking; it changes the length of the affordability requirements; it clarifies that the density bonus for senior development also applies to senior mobilehome parks; ~~and it clarifies that the applicant may only receive one density bonus per project.~~

In addition to the new provisions included within state law, the City would offer up to a 10 percent ministerial density bonus to projects that build inclusionary units (required for residential projects pursuant to the Inclusionary Housing Ordinance) on-site rather than paying an in-lieu affordable housing fee, and offer a 20 percent ~~increased~~ density bonus (rather than the five percent minimum offered per state law) for projects that provide ten percent of the units as moderate income ownership units.

In summary, the goal of the density bonus ordinance is to increase the supply of the City's affordable housing by bringing the City's density bonus ordinance into compliance with state law and enacting two additional provisions specific to San Diego. A copy of the draft Density Bonus Regulations has been included with this document as Attachment B.

II. ENVIRONMENTAL SETTING: See EIR.

III. DISCUSSION

The City's density bonus regulations were originally adopted in 1981 and were last amended in 1999. The City's existing density bonus regulations were never approved by the Coastal Commission, so by default state regulations apply in the Coastal Zone. State law supersedes the City's current density bonus ordinance, and staff has been using both current state law and the existing City regulations to review density bonus applications. State law provisions take precedence in the event of a conflict.

Approximately 1000 density bonus units have been produced over the last 20 years within the City of San Diego. With the ordinance revisions, it is anticipated that approximately 50 to 100 density bonus units could be provided per year. As is currently the case, applicants may request additional ~~incentives~~ deviations or community plan amendments for the provision of an increased number of units ~~as well~~ through the discretionary process.

The proposed amendments to the LDC would define the parameters for density bonus projects specific to the City of San Diego for developments of five or more dwelling units. As is currently the case for all discretionary projects, all new discretionary developments which take advantage of the ordinance provisions would be required to comply with applicable environmental regulations.

Maximum Density

For projects providing inclusionary units on-site, the maximum ~~ministerial density on-site building bonus granted~~ allowed would be ten percent. An applicant could seek an additional 25 percent density bonus, up to a maximum density bonus of 35%, if the proposed code revisions are adopted ~~state law density bonus regulations are utilized.~~

For senior citizen housing projects of at least 35 units or a mobilehome park that limits residency based on age requirements for older persons the density bonus would be 20 percent.

For projects providing a donation of land, the density bonus would be granted for a donation of land that ~~could accommodate at least 10 percent of the pre-density bonus units of the proposed development (is approximately one acre or of sufficient size to permit the development of at least 40 very low income affordable units).~~ The land must be zoned and have a general plan designation appropriate for residential development, and must be adequately served by public facilities and infrastructure. In addition, the land must be within the boundary of the proposed development or within ¼ mile of the boundary of the proposed development subject to with City approval. ~~The density bonus, for projects providing a land donation, would start at a minimum of 15 percent pre-density bonus units or 15 percent of the maximum FAR allowed for projects within Centre City Planned District. The density bonus would increase on a sliding scale up to 35 percent for land that could accommodate 30 dwelling units.~~

For other qualifying projects the new density bonus regulations mandated by state law allow a maximum pre-density bonus of 35 percent (either of units or the maximum FAR allowed for projects within Centre City consistent with LDC Section 151.0310(e)) rather than the 25 percent previously allowed. This increased density could be higher than the density allowed by the underlying zone, community plan, and/or planned district ordinance.

Additional Development Incentives (Section 143.0740)

New state law requires that the City grant an applicant's request for up to three incentives in conjunction with a density bonus project. These incentives may include a deviation from development regulations, the approval of a mixed use development in conjunction with a residential development, or any other regulatory deviation proposed by the applicant or the City which would result in an identifiable, financially sufficient, and actual cost reduction. A mixed-use development of residential and commercial, office, or industrial uses must reduce the cost of the residential development and the non-residential portion must be compatible with the residential development and the applicable land use plan.

For further clarification regarding potential incentives, the proposed amendments (See pages 5 & 6 of Attachment B) specifically preclude the following from being considered as density bonus incentives:

- A waiver of a required permit
- A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5)
- A waiver of fees or dedication requirements
- A direct financial incentive
- A deviation from the requirements of the San Diego Building Regulations

In addition, incentives may not be granted if the City makes written findings that the incentive is not required in order to provide for affordable housing costs, or would have an adverse impact upon health and safety, or the physical environment, or on any property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. However, the granting of an incentive would not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other

discretionary approval. In addition, and according to state law, CEQA only applies to discretionary projects.

Qualified projects that include child care centers under certain conditions would be entitled to either an additional density bonus (of up to a maximum density bonus of 35 percent) or an additional regulatory incentive.

The applicant may also request a reduction of the parking requirement, inclusive of handicapped and guest parking, for certain projects not exceeding the ratios shown on Attachment C. The new density bonus regulations would allow up to three regulatory development incentives based on the number and the affordability of the units provided in a common interest development through a Process One action. Additional incentives may be granted via deviation requests through a Process ~~Four~~ Three, Planned Site Development Permit (PSDP) action, provided that supplemental findings can be made.

Supplemental Findings

~~The supplemental findings for SDP are:~~

- ~~1. The development assists in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City.~~
- ~~2. The incentive would not have an adverse impact upon the public health, and safety, or upon environmentally sensitive lands.~~
- ~~3. The incentive would not have an adverse impact on historical resources.~~

Coastal Zone (Section 143.0750)

Affordable Housing Density Bonus projects within the Coastal Overlay Zone would be subject to the applicable certified land use plan and implementing ordinances, including the Coastal Development Permit. Deviation requests from the Environmentally Sensitive Lands Regulations within the coastal zone would require that a Site Development Permit be obtained and supplemental findings be made. Height within the Coastal Height Limitation Overlay Zone/Proposition D Area would continue to be subject to the current 30-foot height limit. As described earlier, deviations from the requirements of the Coastal Height Limit Overlay Zone could not be considered as incentives.

Supplemental Findings – Environmentally Sensitive Lands within the Coastal Overlay Zone (Section 126.0708)

The supplemental findings required for requests for deviations from Environmentally Sensitive Lands Regulations have been revised to require that a public hearing on the Coastal Development Permit address the economically viable use determination. (The economically viable use determination is that the use and project design, siting, and size are the minimum necessary to provide economically viable use.) In addition, findings must include that feasible alternatives to the requested incentive and the effects on coastal resources have been considered and the granting of the incentive or alternative will not adversely affect coastal resources.

It should be noted that the decision maker would not be precluded from denying the project ~~for other reasons based on the required findings for a Coastal Development Permit and a Site Development Permit.~~

Projects Subject to the California Environmental Quality Act (CEQA)

Discretionary projects are subject to CEQA while ministerial projects are statutorily exempt. If a project would have been discretionary without the requested density bonus or incentive(s) it would continue to be discretionary and would be subject to CEQA. If a project would have been ministerial without the requested density bonus or incentive(s) it would continue to be ministerial and would not be subject to CEQA review. Additionally, projects requesting incentives that otherwise would require discretionary review (without a density bonus) now may become ministerial using the density bonus regulations. By approving the amendments to the LDC, the City Council would be codifying how projects proposing to use the density bonus regulations would be processed.

Potential Impacts

Visual Quality (Neighborhood Character/Views/Aesthetics)

Significance Criteria

In analyzing a project's potential environmental effects, staff is guided by the City's Significance Determination Thresholds. The Visual Quality section of the Guidelines addresses public views from public spaces, neighborhood character, and aesthetics. While several factors are involved in evaluating potential project impacts in these areas, the effect of bulk and scale is a common theme in all three. For instance, according to the Guidelines, projects that severely contrast with the surrounding community character by substantially exceeding height or bulk regulations, or those that strongly contrast architecturally with existing patterns of development in surrounding areas may result in a significant impact on neighborhood character. Projects that exceed height and bulk regulations and, as a result, substantially block views from public areas (roads, designated open space, etc.) of public resources such as the ocean may be considered to have a significant view impact. Projects with development features that significantly conflict with the height, bulk, or coverage regulations of a zone without also providing architectural interest may result in a significant aesthetic impact.

Impact Conclusion of the LDC EIR

The LDC EIR did not identify significant view or aesthetic impacts, and concluded that significant impacts to neighborhood character would not result from the adoption of the LDC. This conclusion was based on the expectation that future projects would conform to the LDC development regulations. These regulations specify the bulk and scale limits of features that affect neighborhood character, views, and aesthetics, such as building setbacks, lot size, height, and floor area ratio (FAR). In general, these types of limits are identified and applied within each zone or planned district ordinance.

Proposed Project Impact

The density bonus incentives included in the revised ordinance would potentially allow for up to three deviations from the bulk and scale regulations of the underlying zones without requiring the project to process a discretionary permit. The deviation(s) allowed would be on a case-by-case basis, and could include deviations from the underlying zone requirements related to height, lot size, FAR, and setbacks. The allowed deviations and additional density could result in structures

that are larger and taller than surrounding buildings, closer to adjacent structures and roadways, and/or cover a larger portion of the property. These differences may result in direct impacts on neighborhood character and aesthetics. Larger structures also have the potential to block public views. Construction of several projects with bulk and scale deviations in any one area may also result in localized cumulative visual quality impacts.

Mitigation

Ministerial projects are not subject to CEQA, and such projects would not undergo environmental review or be required to provide mitigation. However, specific mitigation measures would be determined on a case-by-case basis for any future projects that go through the discretionary environmental review process. It is anticipated that impacts related to aesthetics may be mitigable through architectural treatments, such as façade articulation and building textures and colors. Substantial view blockages could not be mitigated. Severe contrast with community character resulting from increased height and bulk may be reduced through architectural treatments, but likely not to a level below significance in every case.

Significance of Impact

For discretionary projects, aesthetic impacts may be reduced to below a level of significance with appropriate mitigation. However, for ministerial projects the aesthetic impacts may not be mitigated. Direct and cumulative Visual Effects and Neighborhood Character would be considered significant and not mitigated.

Only adoption of the “No Project Alternative” would reduce visual quality impacts.

Transportation/ Parking

Significance Criteria - Traffic

As stated earlier, in analyzing a project’s potential environmental effects, staff is guided by the City’s Significance Determination Thresholds. The Traffic/Parking section of the Thresholds addresses direct traffic impacts which are projected to occur at the time a proposed development or associated developments become operational, and cumulative traffic which is projected to occur at some point after the development or associated developments become operational in the future. According to the Thresholds, intersections and roadway segments affected by a project with a current level of service (LOS) D or better are considered acceptable under both direct and cumulative conditions. For undeveloped locations the goal is to achieve a LOS of C. If any intersection, roadway segment, or freeway segment affected by a project would operate at LOS E or F under direct or cumulative conditions, the impact would be significant if the project exceeds LOS thresholds for freeways, roadway segments, intersections or ramp metering.

Significance Criteria – Parking

In addition, the City’s Significance Determination Thresholds address parking deficiencies that may constitute a significant impact. Parking deficiencies of more than ten percent would also need to substantially impact an adjacent residential area or severely impede the accessibility of a public facility to be determined significant.

Impact Conclusion of the LDC EIR

The LDC EIR anticipated that there might be increased development due to the reduced complexity of the land development regulations. This development could be accompanied by a corresponding increase in traffic on already overcrowded streets and potential reductions in LOS at existing intersections. Therefore, the EIR concluded that the adoption of the LDC could result in future development that could incrementally increase the potential for cumulatively significant traffic impacts.

The LDC EIR anticipated a reduction in parking in transit areas and for very low income housing projects but concluded that the patterns and intensity of growth were not proposed to be changed and, therefore, overall parking demand would not be significantly increased by the implementation of the LDC. The LDC EIR concluded that the project would not have a significant adverse impact on the amount of parking required in the city nor on the area required to meet parking demands.

Impact - Proposed Density Bonus Ordinance Revisions

The increased density resulting from the proposed revisions to the City's Density Bonus Ordinance could result in maximum densities of 35 percent over the existing zoning for qualified projects; and, if requested by the applicant, reduced parking standards with options to include tandem or uncovered parking (Please see Attachment C). In addition, projects within the Transit Area Overlay Zone currently receive 10 to 20 percent parking reductions (LDC Section §142.0525), and those projects providing very low income housing already receive reductions of 10 to 20 percent of the required parking or 50 percent for very low income single room occupancy hotels (LDC Section §142.0530). The implementation of the ordinance could exacerbate existing transportation congestion.

Significance of Impact

The density achieved with the implementation of this ordinance could result in new potentially significant direct and cumulative parking impacts. In addition, the project could result in new direct transportation impacts and would add to the cumulative impacts already identified in the LDC EIR.

Only the adoption of the "No Project Alternative" would reduce parking and transportation impacts.

Health and Safety

In general, the City's community plans incorporate elements that specify or plan for adequate public services and facilities to accommodate the specific densities within each community. However, the proposed ordinance revisions would allow individual project densities over and above the current zoning and community plans. While density bonus projects would be assessed facilities benefit or impact fees to pay for their share of the required facilities, it is possible that the adoption of the proposed ordinance could contribute to current or future public service deficiencies. The ordinance includes language that states that any proposed additional development incentives or concessions (deviations) would not be granted if they could result in a

threat to public health and safety. This provision is a necessary finding for denying the development incentive (deviation).

Public Services and Facilities

According to State Senate Bill 435, "It is the intent of the Legislature that local governments encourage, to the maximum extent practicable, the location of housing development pursuant in urban areas with adequate infrastructure to serve the housing per Section 65915 of the California Government Code."

Impacts to public services and facilities are evaluated in light of whether or not the deficiency in facilities would result in a physical change in the environment related to the construction or alteration of the facility. CEQA specifically addresses physical impacts to the environment (CEQA Sections 15126 (a) and 15382). If a project does not include the construction of public facilities which cause a physical impact to the environment then a significant environmental impact would not result. It is not anticipated that substantial changes in development or growth patterns, density or type of allowable residential developments would occur as a result of the adoption of this ordinance. This is due to the limited historical use of the existing state density bonus ordinance (which comprises a majority of the proposed ordinance) and the built-in limits to the density increases that would be allowed.

Other Potential Impacts

Future density bonus units are not expected to exceed the cumulative impacts to Soils/Erosion Hazard, Air Quality, Hydrology/Water Quality, Biological Resources, Land Use, Transportation/Circulation, Landform Alteration, Historical Resources, and Paleontological Resources that were already analyzed and disclosed in the Land Development Code EIR.

Conclusion

The proposed revisions could result in new direct and cumulative significant environmental impacts requiring that the decisionmaker adopt Findings and a Statement of Overriding Considerations.

IV. ALTERNATIVES

No Project Alternative: This alternative would not bring the City's ordinance into compliance with State law. It would not end the current process in which staff evaluates individual projects using the existing ordinance with State regulations superceding when there is a conflict. This alternative would not include the City's proposed 10 percent on-site ministerial inclusionary density bonus incentive or the City's proposed 20 percent density bonus for moderate income ownership units. Since the State law is already in effect, this alternative would not result in any additional environmental impacts. The no project alternative is considered to be infeasible because it does not meet the project goal of increasing the supply of affordable housing by bringing the City's ordinance into compliance with state law and providing two additional provisions specific to San Diego.

Elimination of the City's On-Site Inclusionary Unit Density Bonus: This alternative would eliminate the City's suggested density bonus which would provide a 10 percent ministerial density

bonus for projects that build inclusionary units on-site rather than paying their in-lieu inclusionary housing fee. This on-site inclusionary provision has been added to the LDC to enhance the efforts of the inclusionary housing program by helping to assure that inclusionary units were built, and since the payment of in-lieu fees has not resulted in the development of equivalent housing at alternative sites. The removal of this density bonus could reduce potential impacts to visual quality, transportation and parking since fewer units may be built at the proposed sites. The incorporation of this provision is anticipated to have a minor impact because of the size of the density bonus (10 percent) ~~and because no additional density bonus or incentives would be offered to projects within this category.~~

This alternative may result in fewer unmitigated direct visual quality and transportation/parking impacts than the following alternative. Cumulative impacts would remain significant. This alternative is considered to be infeasible because it does not meet the project goal of increasing the supply of affordable housing by enacting an on-site inclusionary bonus provision.

Elimination of the City's 20 Percent Density Bonus for Moderate Income Ownership Units: Environmental Preferred Alternative. This alternative would eliminate the City's proposed minimum 20 percent density bonus for common interest moderate income ownership units. The elimination of this incentive would reduce the number of affordable moderate income ownership housing units built because it is anticipated that the five percent density bonus proposed by state law would not be sufficient to attract such development in San Diego's high land cost market. The elimination of this incentive would reduce but not eliminate potential impacts to visual quality and transportation/parking since the other regulatory incentives or concessions would still be available. This alternative may result in direct impacts which may not be reduced to below a level of significance in every case. Cumulative impacts would remain significant. This alternative is considered to be infeasible because it does not meet the project goal of increasing the supply of affordable housing by enacting a 20 percent density bonus provision for moderate income ownership units.

V. DETERMINATION:

The City of San Diego previously prepared an Environmental Impact Report (EIR) No. 96-0333 for revisions to the Land Development Code. Based upon a review of the current project, it has been determined that the revisions to the Density Bonus Ordinance may result in significant effects not discussed in the previous EIR.

Therefore, in accordance with Sections 15163 and 15164 of the State CEQA Guidelines, this Supplement EIR has been prepared.

VI. MITIGATION, MONITORING AND REPORTING PROGRAM INCORPORATED INTO THE PROJECT:

No mitigation is required for these proposed revisions to the Land Development Code. As development occurs, individual discretionary projects would be subject to environmental review, impact analysis, and identification of project-specific mitigation measures.

VII. SIGNIFICANT UNMITIGATED IMPACTS:

The final EIR for the original project identified significant unmitigated impacts in the following areas: Land Use, Biological Resources, Landform Alteration, Historical Resources, Paleontological Resources, and Human Health and Public Safety. Cumulative impacts were also identified to Soils/Erosion Hazard, Air Quality, Hydrology/Water Quality, Biological Resources, Land Use, Transportation/Circulation, Landform Alteration, Historical Resources, and Paleontological Resources. Significant effects previously examined would not be substantially more severe than shown in the previous EIR. However, the proposed revisions to the Density Bonus Ordinance have the potential to result in significant impacts to visual quality and transportation/parking, as well as cumulative impacts to visual quality and parking.

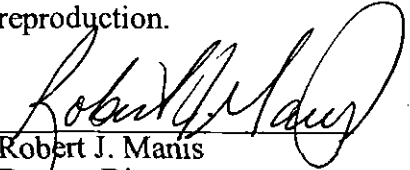
Because there are new significant unmitigated direct and cumulative impacts associated with future development in conformance with the proposed revisions, approval requires the decision-maker to make specific and substantiated CEQA Findings which state that:

- a) specific economic, social or other considerations make infeasible the project alternatives identified in the Supplement EIR; and
- b) the impacts have been found acceptable because of specific overriding considerations. Approval of the project requires the decisionmaker to adopt the Findings and a Statement of Overriding Considerations.

VIII. RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but they did not address the draft Supplement findings or the accuracy/completeness of the Initial Study. No response is necessary. The letters and responses follow.
- (X) Comments addressing the findings of the draft Supplement EIR and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft Supplement EIR, EIR No. 96-0333, and any technical appendices may be reviewed in the office of the Land Development Review Division, or purchased for the cost of reproduction.


Robert J. Manis
Deputy Director
Development Services Department

May 16, 2007
Date of Draft Report

August 14, 2007
Date of Final Report

Analyst: Mirrasoul

Attachments:

Attachment A: Conclusions of Final EIR No. 96-0333

Attachment B: Draft Affordable Housing Density Bonus Regulations

Attachment C: Parking Table



ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT
DIRECTOR

July 3, 2007

Marilyn Mirrasoul
City of San Diego
1222 First Avenue, MS-501
San Diego, CA 92101-4135

Subject: Land Development Code Revisions: Affordable Housing Density Bonus Regulations
SCH#: 1996081056

Dear Marilyn Mirrasoul:

The State Clearinghouse submitted the above named Supplemental EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on July 2, 2007, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

1.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1. Comment acknowledged. This letter acknowledges compliance with the State Clearinghouse review requirements for draft environmental documents.

Document Details Report
State Clearinghouse Data Base

SCH# 1996081058
Project Title Land Development Code Revisions: Affordable Housing Density Bonus Regulations
Lead Agency San Diego, City of

Type SIR Supplemental EIR
Description Amendments to Chapter 14, Article 3, Division 7, Sections 143.0710 through 143.0760 and Chapter 12, Article 6, Division 7 of the Municipal Code, Section 126.0708 and Section 141.0310. The regulations are intended to apply city-wide; however, until unconditionally certified by the Coastal Commission, only the existing State Density Bonus Law would apply in the Coastal Zone.

Lead Agency Contact

Name Marilyn Mirasouf
Agency City of San Diego
Phone (619) 446-5380 **Fax**
email
Address 1222 First Avenue, MS-501
City San Diego **State** CA **Zip** 92101-4135

Project Location

County San Diego
City San Diego
Region
Cross Streets
Parcel No.
Township

Range **Section** **Base**

Proximity to:

Highways
Airports
Railways
Waterways
Schools
Land Use

Project Issues Cumulative Effects; Aesthetic/Visual; Traffic/Circulation

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Game, Region 5; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 11; Department of Housing and Community Development; Regional Water Quality Control Board, Region 9; Native American Heritage Commission

Date Received 05/17/2007 **Start of Review** 05/17/2007 **End of Review** 07/02/2007

Note: Blanks in data fields result from insufficient information provided by lead agency.

NATIVE AMERICAN HERITAGE COMMISSION

916 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-8251
Fax (916) 657-6390
Web Site www.nahc.ca.gov
e-mail: de_nahc@pacbell.net



June 21, 2007

Ms. Marilyn Mirrasoul, Environmental Planner
CITY OF SAN DIEGO DEVELOPMENT SERVICES CENTER
1222 First Avenue, MS 501
San Diego, CA 92101

Re: SCH#1996081056; CEQA Notice of Completion; Addendum to Environmental Impact Report (EIR) for Land Development Code Revisions; Affordable Housing Density Bonus Regulations Project No. 129501; City of San Diego Development Services Department, San Diego County, California

Dear Ms. Mirrasoul:

Thank you for the opportunity to comment on the above-referenced document; the State Clearinghouse transmittal sheet informed us that we have until June 25, 2007 to respond to this proposed project. The Native American Heritage Commission is the state's Trustee Agency for Native American Cultural Resources. The California Environmental Quality Act (CEQA) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per CEQA guidelines § 15064.5(b)(c). In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following action:

2. ✓ Contact the appropriate California Historic Resources Information Center (CHRIS). Contact information for the Information Center nearest you is available from the State Office of Historic Preservation (916/853-7278) <http://www.ohp.parks.ca.gov/1068/files/IC%20Roster.pdf>. The record search will determine:
 - If a part or the entire APE has been previously surveyed for cultural resources.
 - If any known cultural resources have already been recorded in or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- ✓ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological information center.
- ✓ Contact the Native American Heritage Commission (NAHC) for:
 - A Sacred Lands File (SLF) search of the project area and information on tribal contacts in the project vicinity that may have additional cultural resource information. Please provide this office with the following citation format to assist with the Sacred Lands File search request: USGS 7.5-minute quadrangle citation with name, township, range and section.
 - The NAHC advises the use of Native American Monitors to ensure proper identification and care given cultural resources that may be discovered. The NAHC recommends that contact be made with Native American Contacts on the attached list to get their input on potential project impact (APE).
- ✓ Lack of surface evidence of archaeological resources does not preclude their subsurface existence.
 - Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archaeological resources, per California Environmental Quality Act (CEQA) § 15064.5 (f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
 - Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.
- ✓ Lead agencies should include provisions for discovery of Native American human remains or unmarked cemeteries in their mitigation plans.
 - CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the

2. This comment letter describes standard research and mitigation measures necessary for site-specific projects which may impact sensitive Native American resources. This project is a policy document; therefore, these measures do not apply; however, the City has been working with the Native American community to address their concerns.

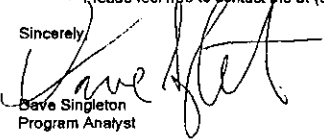
NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

✓ Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the CEQA Guidelines mandate procedures to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

✓ Lead agencies should consider avoidance, as defined in § 15370 of the CEQA Guidelines, when significant cultural resources are discovered during the course of project planning.

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,


Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: List of Native American Contacts

Native American Contacts
San Diego County
June 21, 2007

<p>La Posta Band of Mission Indians Wendolyn Parada, Chairperson PO Box 1120 Diegueno Boulevard , CA 91905 (619) 478-2113 (619) 478-2125</p>	<p>Viejas Band of Mission Indians Bobby L. Barrett, Chairperson PO Box 908 Diegueno/Kumeyaay Alpine , CA 91903 daguilar@viejas-nsn.gov (619) 445-3810 (619) 445-5337 Fax</p>
<p>San Pasqual Band of Mission Indians Allen E. Lawson, Chairperson PO Box 365 Diegueno Valley Center , CA 92082 760) 749-3200 760) 749-3876 Fax</p>	<p>Kumeyaay Cultural Historic Committee Ron Christman 56 Viejas Grade Road Diegueno/Kumeyaay Alpine , CA 92001 (619) 445-0385</p>
<p>Santa Ysabel Band of Diegueno Indians Johnny Hernandez, Spokesman PO Box 130 Diegueno Santa Ysabel , CA 92070 randietaylor@yahoo.com 760) 765-0845 760) 765-0320 Fax</p>	<p>Jamul Indian Village Leon Acebedo, Chairperson P.O. Box 612 Diegueno/Kumeyaay Jamul , CA 91935 jamulrez@sctdv.net (619) 669-4785 (619) 669-48178 - Fax</p>
<p>Sycuan Band of the Kumeyaay Nation Janny Tucker, Chairperson 1459 Sycuan Road Diegueno/Kumeyaay El Cajon , CA 92021 silva@sycuan-nsn.gov (619) 445-2613 (619) 445-1927 Fax</p>	<p>Mesa Grande Band of Mission Indians Mark Romero, Chairperson P.O. Box 270 Diegueno Santa Ysabel , CA 92070 mesagrandeband@msn.com (760) 782-3818 (760) 782-9092 Fax</p>

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native American with regard to cultural resources for the proposed CH#1998081056; CEQA Notice of Completion; Addendum to Environmental Impact Report Project No. 129501; and Development Code Revisions: Affordable Housing Density Bonus Regulations Project No. 129501; City of San Diego Development Services Department; San Diego County, California.

Native American Contacts
San Diego County
June 21, 2007

Kumeyaay Cultural Heritage Preservation
Paul Cuero
36190 Church Road, Suite 5 Diegueno/ Kumeyaay
Campo , CA 91906

(619) 478-9046
(619) 478-9505
(619) 478-5818 Fax

Santa Ysabel Band of Diegueno Indians
Devon Reed Lomayevsa, Esq, Tribal Attorney
PO Box 701 Diegueno
Santa Ysabel , CA 92070
drlomayevsa@verizon.net
(760) 765-0845
(760) 765-0320 Fax

Kwaaymii Laguna Band of Mission Indians
Carmen Lucas
P.O. Box 775 Diegueno -
Pine Valley , CA 91962
(619) 709-4207

Clint Linton
P.O. Box 507 Diegueno/Kumeyaay
Santa Ysabel , CA 92070
(760) 803-5694
cjlinton73@aol.com

Inaja Band of Mission Indians
Rebecca Osuna, Spokesperson
309 S. Maple Street Diegueno
Escondido , CA 92025
naja_cosmite@hotmail.com
(760) 737-7628
(760) 747-8568 Fax

Sycuan Band of the Kumeyaay Nation
Sydney Morris, Environmental Coordinator
5459 Sycuan Road Diegueno/Kumeyaay
El Cajon , CA 92021
(619) 445-2613
(619) 445-1927-Fax

Kumeyaay Cultural Repatriation Committee
Steve Banegas, Spokesperson
1095 Barona Road Diegueno/Kumeyaay
Lakeside , CA 92040
(619) 443-6612
(619) 443-0681 FAX

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native American with regard to cultural resources for the proposed ICH#1996081056; CEQA Notice of Completion; Addendum to Environmental Impact Report Project No. 129501; and Development Code Revisions: Affordable Housing Density Bonus Regulations Project No. 129501; City of San Diego Development Services Department; San Diego County, California.

From: "Rugh, Bob" <BOB.RUGH@cubic.com>
To: "MMirrasoul@sandiego.gov" <MMirrasoul@sandiego.gov>
Date: 6/13/2007 2:09:49 PM
Subject: Project No. 63422

I am strongly opposed to the Land Development Code Revisions that will remove community planning groups from the review process for Density Bonus Ordinance Amendments. Keep the local community planners involved in their respective areas. Please consider and thank you.

3.

Bob Rugh

26 yr resident of Pacific Beach

3. This comment does not address the adequacy of the environmental document. Note that the majority of multifamily developments within the City are subject to the discretionary approval process due to site conditions, requested deviations to the regulations, and/or the location of the project. For example, multifamily development located within the Coastal Overlay Zone requires a discretionary permit (Coastal Development Permit). All projects that require a discretionary permit and request density bonus will be required to process a discretionary permit. Such projects will also continue to be reviewed by the appropriate community planning group. The proposed regulations would also allow projects that do not otherwise require a discretionary approval to continue to be processed without a discretionary permit (Process One). To require discretionary approval to build affordable housing units, when discretionary approval would not be required without the affordable housing would discourage the development of affordable housing.

From: "GP" <geoff@san.rr.com>
To: <mmirrasoul@sanidiego.gov>
Date: 6/13/2007 11:55:07 AM
Subject: Project No. 63422

I am a 25 year resident and homeowner in San Diego. I am strongly opposed to the Land Development Code Revisions that will remove community planning groups from the review process for Density Bonus Ordinance Amendments.

Development Services Department staff should not be allowed to make decisions that will likely directly impact quality of life for residents and homeowners without local community review. Issues of aesthetics, traffic, crime and education cannot be fully considered and adequately addressed without the unique experiences and viewpoint that members of the local community provides.

4.

While affordable housing is an important issue in the City of San Diego, we can not afford to discard community involvement in community planning in favor of "shortcuts" or "streamlined" processes. A community detached from being a part of planning its' own future ceases to be a community.

I strongly encourage your support in FAVOR of local community involvement and OPPOSE Land Development Code revisions that will remove community planning groups from the review process for Density Bonus Ordinance Amendments.

Regards,

Geoffrey Patrick, homeowner
The Community of Rancho Penasquitos

4. Please see Response No. 3. The City recognizes that community planning group members provide a valuable service regarding the review of projects in their communities. The Development Services staff will implement the regulations of the Land Development Code as adopted by the City Council.

From: dv8biker" <dv8biker@yahoo.com>
To: <MMirrasoul@sandiego.gov>
Date: 6/13/2007 3:00:11 PM
Subject: Project No. 63422

Marilyn Mirrasoul
City of San Diego
Land Development Review,
Environmental Analysis Section
1222 First Avenue, MS 501
San Diego, CA 92101-4155

Ms Mirrasoul,

I am a 22 year resident and homeowner in San Diego. I am strongly opposed to the Land Development Code Revisions that will remove community planning groups from the review process for Density Bonus Ordinance Amendments.

Development Services Department staff should not be allowed to make decisions that will likely directly impact quality of life for residents and homeowners without local community review. Issues of aesthetics, traffic, crime and education cannot be fully considered and adequately addressed without the unique experiences and viewpoint that members of the local community provides.

While affordable housing is an important issue in the City of San Diego, we can not afford to discard community involvement in community planning in favor of "shortcuts" or "streamlined" processes. A community detached from being a part of planning its' own future ceases to be a community.

I strongly encourage your support in FAVOR of local community involvement and OPPOSE Land Development Code revisions that will remove community planning groups from the review process for Density Bonus Ordinance Amendments.

Regards,

Jeffrey M. Dolinger, Homeowner
The Community of Mira Mesa

5. Please see Response No. 3.

From: "Kathy Mateer" <pbplanninggal@yahoo.com>
To: <mmirrasoul@sandiego.gov>
Date: 5/27/2007 6:11:02 PM
Subject: Project #63422 Supplement to EIR No. 96-0333 SCH No. 96081056

I am responding and submitting my comments regarding the above supplement EIR.

I am against the Affordable housing density bonus increase. My comments should be put in public comments received. The state is not mandating that we increase our bonus density any more than what it is now. We are fine, we are legal in the eyes of the State of California. I have read the State's bonus density ordinance.

The draft supplement concluded that the proposed revisions have the potential to result in SIGNIFICANT impacts to visual quality and transportation, parking as well as cumulative impacts to visual quality and parking.

It is not state mandated to increase the bonus density. I urge you to keep with the state recommended plan like we have in San Diego at this time.

San Diego gave a bonus density to urge builders to build low income housing on site. Most developers decided they couldn't make as much money building units on site, so San Diego told them they could pay an "in lieu" fee instead. Most builders, of course, pay the "in lieu" fee instead because it is a lot cheaper for them to do that. They still get the bonus density allowed and all the other perks, and they don't have to do a thing except pay a token "in lieu" fee. Pretty good deal, I think.

But San Diego still needs affordable housing, so now they offer another bonus or two on top of the one that didn't produce anything except "in lieu" fees.

I realize that the money collected goes into a fund and that produces affordable housing but why should builders get any type of bonus density when they aren't producing the intended low income housing on site.

Why should builders get a bonus density for "in lieu" fees in the first place. They should not unless they go by the rules.

I believe they should get rid of the "in lieu" fees all together so affordable housing will be built.

There are areas of San Diego that affordable housing just doesn't make since. Land that is very expensive reaps huge benefits from all these bonuses and the community suffers greatly because the number of units are up to 35% more than the community plan allows. What about infrastructure? There is not 35% more infrastructure, 35% more police, etc. Instead, we have 35% more people, traffic, less visual quality, less parking, transportation impacts to say a few, and when you add the cumulative impacts, you get what is happening to Pacific Beach.

Our quality of life is suffering. We don't have the infrastructure to support the type of bonuses you are handing out which results in additional density and no affordable housing. As long as I have been on the committee, I have seen one single development actually build affordable housing on site instead of paying the "in lieu" fee. One!

The numerous problems that will increase with an increase in yet more density that the communities can't take.

Remember, it is NOT state mandated... I have read the entire Bonus Density rules of the State. They state that Cities CAN, if they wish give additional bonuses but only to a maximum of 35%. That is not saying we have to take increased density. You are going about growth all wrong and the our quality is suffering. How much density are we to take. How sad to see San Diego start to look and feel like LA. And start thinking about getting rid of the in lieu fees and giving bonuses for nothing!

Kathy Mateer, Chair
Pacific Beach Community Planning Committee

Be a better Globetrotter. Get better travel answers from someone who knows.
Yahoo! Answers - Check it out.

6. Please see Response No. 3. The State Density Bonus law increased the maximum density bonus from 25 percent to 35 percent. The requirement to grant a density bonus is not optional but is required by law. The legislative counsel's digest for Senate Bill 435 states: "The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer meets certain requirements, including a requirement that the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents.

The in-lieu fees are regulated by the inclusionary housing ordinance which is not a part of this density bonus ordinance.

From: "Randy Berkman" <jrb223@hotmail.com>
To: <mimirasoul@sandiego.gov>
Date: 6/29/2007 3:27:59 PM
Subject: comments on SEIR for Density Bonus Code regulation update: project #63422

Comments on the SEIR for Density Bonus Code regulation changes
Project # 63422
Randy Berkman
Jrb223@hotmail.com

Page 4 of the SEIR states "

"The new density bonus regulations would allow up to three regulatory development incentives based on the number and the affordability of the units provided in a common interest development through a Process One action. Additional incentives may be granted via deviation requests through a Process Three, Site Development Permit (SDP) action provided that supplemental findings can be made."

Allowing up to 3 incentives as Process One does not appear to be required by CA law. Rather, is not this something that DSD is proposing? I do not recall reading anything in CA law that even refers to Process One (a local process) or that cities must grant such incentives "ministerially." What if the incentive would have an adverse impact on traffic? Would DSD still consider this Process One? If so, this is absurd to grant this as a Process One—and clearly not compliant with CEQA. What if the incentive would have an adverse impact on air quality? Would DSD still consider that Process One? If so, this would also be absurd and not compliant with CEQA.

Page 4 of the SEIR states: "Additionally, projects requesting incentives that otherwise would require discretionary review (without a density bonus) now may become ministerial using the density bonus regulations." I recall nothing in CA law requiring this. Is DSD claiming CA law requires this? If so, please reprint the Exact part of the CA law. Would this be a DSD creation to "streamline" projects to avoid CEQA review?

That is how it appears to me; and in this sense is not compliant with CEQA. Is the Mayor promoting this?

Page 5 of the SEIR states: "The density bonus incentive included in the revised ordinance would potentially allow for up to three deviations from the bulk and scale regulations of the underlying zones without requiring the project to process a discretionary permit." This is CHILLING and is at the heart of the recent public outcry regarding these deviations issued without any public input. Where in CA law does it say that such deviations must be issued without CEQA or discretionary review? I find no such reference in CA law. Isn't this a DSD proposal that goes well beyond what CA law requires? The local ordinance should not eliminate ANY required CEQA and/or discretionary reviews. Otherwise, how can public and decision makers know whether project would have "adverse impact on the physical environment"/grounds for rejecting the proposal? Page 5 of the SEIR states "By approving the amendments to the LDC, the City Council would be codifying how projects proposing to use the density bonus regulations would be processed." This again, is chilling. You cannot codify non-compliance with CEQA by "sweeping 3 deviations" under the Density Bonus rug (not counting them as subject to CEQA and discretionary review)! You cannot propose an SEIR that proposes non-compliance with CEQA as part of City Code for development Process regulations! Again, this is at the heart of the public outcry that occurred. As it states on page 6 of the SEIR, "Ministerial projects are not subject to CEQA, and such project would not undergo environmental review or be required to provide mitigation...substantial view blockages could not be mitigated.....However, for ministerial projects the aesthetic impacts may not be mitigated." Yet CA law allows decision makers to reject Any density bonus project if it would have an adverse impact on the physical environment. Therefore, taking discretionary projects and sweeping them into Process One/CEQA exempt/ministerial—would be non-compliant with CEQA! This SEIR appears to be non-compliant.

PROPOSED SOLUTION

7. This comment does not address the adequacy of the environmental document. California Government Code Section 65915(d)(2) provides up to three incentives based on the percentage of affordable units in a project and the affordability levels of those units. California Government Code Section 65915(k) states: "The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law." Please see Response No. 3 regarding discretionary review. The proposed regulations would allow projects that do not otherwise require a discretionary approval to continue to be processed without a discretionary permit (Process One). To require discretionary approval to build affordable housing units, when discretionary approval would not be required without the affordable housing would discourage development of affordable housing which is not the intent of the state law.
8. The intent of the regulations is not to avoid CEQA review but to implement the State Affordable Housing Density Bonus law. Please see Response No. 7. Note that while ministerial projects are exempt from CEQA, such projects would still be concurrently reviewed by the Development Services Department, the San Diego Housing Commission, the City Planning and Community Investment Department and would be required to adhere to state, federal, and local laws. The project would also not be approved ministerially if any of the required findings for denial can be made.
9. A number of issues raised in this comment pertain to the ordinance and not the environmental document. The SEIR does not propose non-compliance with CEQA. The SEIR evaluates the potential impacts of implementing the ordinance for both discretionary and ministerial projects.

10. I thought the City Attorney's office was crafting an Ordinance that simply complies with CA density bonus law and does not add any local densities; and does not reclassify discretionary projects as Process One/ministerial. Has the City Attorney reviewed this SEIR prior to its release? If so, what was their comment? Please reproduce City Attorney comments in the Final SEIR.

11. Has not Los Angeles adopted such an Ordinance that simply complies with CA law? What about other cities that have not had any new impacts from their local density bonus law (above and beyond what CA law requires)?

Proposal:

12. Simply add the following language to the SDMC: "The City is required to comply with CA law for granting of density bonuses. All proposals will continue to be subject to CEQA and discretionary review. The granting of density bonuses shall be part of existing discretionary reviews and will remain subject to CEQA." Since decision makers are allowed by CA law to reject density bonus proposals which have adverse impact on the physical environment, such language would be in keeping with that law. It is absurd to use this SEIR to rationalize future non-compliance with CEQA under the guise of density bonuses being required by CA law.

Play free games, earn tickets, get cool prizes! Join Live Search Club.
http://club.live.com/home.aspx?icid=CLUB_wlmailtextlink

CC: <kheumann@sandiego.gov>, <sedwards@sandiego.gov>, <tmullaney@aol.com>,
<ellenshivey@sbcglobal.net>, <peugh@cox.net>

10. This comment does not address the adequacy of the environmental document. The SEIR only addresses the ordinance proposed by the City Planning and Community Investment Department as identified on page one of the SEIR. As a standard practice, EAS provides the City Attorney's office with copies of draft and final environmental documents.

11. This comment does not address the adequacy of the environmental document. The Los Angeles Density Bonus Ordinance is not addressed in this SEIR.

12. The goal of this ordinance is to implement state law. Note that the findings of the State Density Bonus law apply when considering all discretionary or ministerial projects using this ordinance.

Attachment A: Conclusions of Final EIR No. 96-0333

City of San Diego
Development
Services
Department



Land Development
Review Division
(619) 236-6460

Environmental Impact Report

DEP No. 96-0333
SCH No. 96081056

SUBJECT: Land Development Code. Various CITY COUNCIL actions including the ADOPTION of the proposed Land Development Code to be incorporated as Chapters 12, 13 and 14 of the Municipal Code; AMENDMENT and RE-ADOPTION of previously adopted Chapter 11; REPEAL and AMENDMENT of certain chapters of the Municipal Code, including Chapter 10 and portions of Chapters 2, 5, 6 and 9; AMENDMENT of the non-conforming use and premises regulations and renaming to "previously conforming" uses and premises; AMENDMENT of the Local Coastal Program implementing ordinances and other documents in the Local Coastal Program; ADOPTION of categorical exclusions within the Coastal Zone; MODIFICATION of existing planning and zoning support documents and ADOPTION of new support documents; AMENDMENT of zone regulations; and READoption of the Uniform Building Code, the National Electrical Code, the Uniform Mechanical Code and the Uniform Plumbing Code.

Applicant: City of San Diego.

CONCLUSIONS:

Subsequent to preparation of the Draft EIR and distribution of the Final EIR, revisions to the proposed Land Development Code and Land Development Manual have been made. A summary of the revisions is provided in the Preface to the Final EIR following these conclusions. In addition, several comment letters received on the Draft EIR contained accepted revisions which resulted in changes to the Final EIR text. The revision to the project and Final EIR do not include significant new information and would not result in a new significant environmental impact or a substantial increase in the severity of an environmental impact and do not include a new feasible project alternative that would lessen the environmental impacts of the project. Therefore, recirculation of the EIR is not required consistent with CEQA (Public Resources Code section 21092.1) and section 15088.5 of the State CEQA Guidelines.

The Municipal Code is an important tool for implementation of the City's Progress Guide and General Plan. Currently the planning, zoning, engineering and building regulations are located throughout Chapters 2, 5, 6, 9, 10, and 11 of the Municipal Code. The proposed Land Development Code is the location within the Municipal Code for definitions, procedures, zones, and regulations which are used in the development of property other than within the planned districts.

The Municipal Code was revised in 1991 to add Chapter 11 as Phase I of a comprehensive update. The first phase streamlined and reduced the processing

procedures for development actions and standardized the application and noticing requirements. The current proposed project is the second phase of the comprehensive update and includes revisions and reformat of several chapters of the Municipal Code relative to the development process.

The proposed Land Development Code consolidates all development regulations into a sequence of four chapters of the Municipal Code. Technical manuals, standards and guidelines are being consolidated into a Land Development Manual. The Planned Districts have not been substantively revised as part of the proposed project and remain in Chapter 10 of the Municipal Code.

In reports to the City Council, the City Manager identified the overall goals of the Code update project:

Clarity

To write land development regulations which are easy to understand

Objectivity:

To write land development regulations that mean the same thing to everyone

Consistency:

To eliminate contradictions among all land development regulations

Predictability:

To make it clear what land development regulations apply to a project and what to expect from following them

Simplicity:

To reduce the complexity of land development regulations

Adaptability:

To allow for tailoring of land development regulations to fit unique features of the City

Progressiveness:

To use new ideas while retaining the best of existing land development regulations

Integrity:

To develop a code framework which is standardized but which is flexible enough to accommodate future changes

The proposed Code includes changes to existing citywide zones: name changes; changes to permitted uses; and changes to development regulations. There are several new zones that are created to implement existing land use policy; however these new zones would not be applied until: requested by a property owner; proposed as part of a land use plan adoption process; or proposed as part of land use plan consistency rezoning.

There are several proposed procedural changes. The revisions to use regulations include revisions to accessory use regulations. There are proposed revisions to Decision Process 2 which include making it a discretionary review and approval process. Proposed revisions to permit types include reducing the number from more than 80 to 14; variance procedures remain unchanged. The project proposes changes to the regulations for previously conforming uses and premises.

The proposed project includes changes to the development regulations as part of the zone changes. In addition, the project proposes changes to resource protection regulations: there are new Environmentally Sensitive Lands Regulations

which protect sensitive biological resources and hillsides, coastal bluffs and beaches and wetlands. The project includes proposed Historical Resource Regulations, revisions to the Parking Regulations, and revisions to the Landscape regulations.

This EIR analyzes the potential effects to existing on-the-ground conditions if the proposed project were to be implemented. The analysis does not include a comparison between the existing regulations and the effects of implementation of the proposed regulations (plan-to-plan analysis). Descriptions of the existing regulations are included in both Chapter II, Environmental Setting, and Chapter III, Project Description of the attached EIR.

Natural Communities Conservation Plan

On March 25, 1993, the U.S. Fish & Wildlife Service listed the California gnatcatcher as a threatened species under the federal Endangered Species Act (ESA). On December 10, 1993, the federal ESA Section 4(d) rule became effective, affecting projects at all stages of the development process. Where future projects include take of California gnatcatcher and/or its habitat, a permit will be required: either from the USFWS (pursuant to ESA section 7 or 10(a)), or from the City (pursuant to ESA section 4(d)). The Section 4(d) permit process is tied to the state's Natural Communities Conservation Program (NCCP).

The City is enrolled as a participating agency in the state's NCCP, which requires tracking of impacts on coastal sage scrub habitat. (The City's Multiple Species Conservation Program has been accepted by the state as an equivalent to the NCCP.) The NCCP allows the City to approve the loss of up to five percent of existing coastal sage scrub habitat. Approval must also comply with the state NCCP Process Guidelines, which require findings relative to the affect on regional preserve planning, and require that mitigation be adopted. The NCCP Conservation Guidelines have indicated that a five percent loss of coastal sage scrub habitat is acceptable within any individual subregion during the preparation of a subregional NCCP or its equivalent (e.g. MSCP Subarea Plan). Within the City of San Diego, the five percent cumulative loss allowed is 1186 acres of coastal sage scrub.

Total loss allowed:	1186.00 acres
Cumulative actual loss to date:	488.85 acres
Loss due to this project:	0.00 acres
Total cumulative loss:	488.85 acres
Remaining loss allowed:	697.15 acres

Note: Planned loss to date (i.e. approved projects for which grading permits have not yet been obtained) is 530.57 acres.

Approval of the proposed project does not constitute approval of an actual specific development project whereby there would be known loss of coastal sage scrub. Future development in accordance with the proposed regulations would require a permit, either through the City or through the USFWS if loss of coastal sage scrub would result from the proposed activities.

Multiple Species Conservation Program

The Draft Multiple Species Conservation Program (MSCP) is a comprehensive habitat conservation planning program which addresses the habitat needs for 87 covered species and the preservation of natural communities for a 900-square mile area in southwestern San Diego County. The proposed preserve system would replace the currently fragmented, project-by-project biological mitigation areas, which by themselves do not contribute adequately to the continued existence of sensitive species or the maintenance of natural biodiversity. The program creates a process for the issuance of federal and state permits and other authorizations according to the state and federal Endangered Species Acts and the NCCP Act of 1991.

Several of the elements of the proposed project are designed to implement the MSCP. The Environmentally Sensitive Lands Regulations, the Biology Guidelines, and the OR-1-2 zone contain regulations for the protection of sensitive biological resources as identified in the City's Subarea Plan for the MSCP.

The issue of the proposal's effect on long-term conservation of biological resources is analyzed in terms of meeting the goals and objectives of the Multiple Species Conservation Program. Thus, only target species are considered with regard to long-term adverse effects on conservation. This EIR provides no independent analysis whether the design of the MSCP preserve will achieve long-term conservation. The analysis of that issue is provided in the EIR for the MSCP. This EIR uses as a baseline assumption the conclusion of the MSCP EIR that the preserve design and the associated implementation program is adequate for long-term conservation of the covered species. Thus there are two parts of the analysis in this EIR with regard to long-term conservation of biological resources: (1) whether the proposed project adequately achieves the goals and objectives of the MSCP for long-term conservation of covered species and (2) how non-covered species will be affected by the proposed regulations.

Alternatives

There are four alternatives analyzed in the EIR. Alternative 1 is the No Project alternative. Alternatives 2 and 3 concern resource protection regulations and Alternative 4 describes language alternative to the proposed regulations, which, if adopted would avoid or lessen impacts of the proposed project. Therefore, Alternative 4 is environmentally superior to the proposed project. The project alternatives are described more fully below and in Chapter VIII of the EIR.

SIGNIFICANT IMPACTS

Implementation of the proposed Land Development Code would result in unavoidable impacts: those effects which would result from implementation of a project as proposed in spite of the best efforts to minimize environmental effects. Since the proposed project is limited to ordinance language, guidelines and standards, there are no conditions of approval upon which to attach mitigation measures. The only way to avoid the potentially significant effects, as identified in the attached EIR, is through the adoption of one or more alternatives. The following have been identified as potentially significant effects of implementation of the proposed project.

Land Use: inconsistency with environmental goals of adopted land use plans relative to the protection of important and sensitive resources; loss of important agricultural land and mineral resources due to regulations for implementation of the Multiple Species Conservation Program preserve.

Biological Resources: lack of wetland buffer regulations; potentially significant losses of populations of species not covered by the MSCP preserve design and the City's Subarea Plan; potential preclusion of adequate wildlife corridors for species not covered by the MSCP preserve design and the City's Subarea Plan.

Landform Alteration: loss of existing natural landforms, which are considered sensitive resources, through future grading consistent with the regulations of the proposed Code.

Historical Resources: loss of archaeological resources and historical buildings, structures, objects and landscapes consistent with regulations of the proposed Code.

Paleontological Resources: the proposed regulatory scheme does not provide for detection, investigation, collection or preservation of paleontological resources; therefore, there could be a significant loss of resources where projects are not subject to environmental review.

Human Health and Public Safety: potential impacts related to mosquito-borne diseases as mosquito breeding may increase due to drainage/sediment control structures required by the proposed regulations.

In addition to the effects directly attributable the project (project-specific impacts), the project would result in effects on an incremental basis, which when added to other past, present, and reasonably foreseeable future projects would be cumulatively significant. The following are effects of the project which would incrementally contribute to an impact that would, in combination with other effects, be cumulatively significant.

Soils/Erosion Hazard: New development anticipated to occur in accordance with the proposed project would result in increased erosion from exposed soil areas; the resulting sediment ultimately affects downstream wetland and lagoon areas.

Air Quality: There would be new development in accordance with the proposed regulations which would result in increased emissions from traffic and commercial and industrial activities.

Hydrology/ Water Quality: The proposed regulations do not include provisions to control volume or pollutant tolerance levels of runoff from urban areas. With a greater amount of impervious area, there is increased runoff and increased volume of pollutants carried by the runoff.

Biological Resources: There would be losses of species currently identified as sensitive, as well as loss of populations not currently identified as sensitive;

increased pressure to develop outside the MSCP preserve would have cumulatively significant effects on biodiversity and population levels.

Land Use: With development pressure shifted to areas not within the MSCP preserve, there may be increased urbanization or intensification of land use not presently subject to these kinds of development pressures. This pressure could result in potentially significant secondary and cumulative impacts on historical, biological and landform resources.

Transportation/Circulation: New development in accordance with the proposed regulations would increase traffic volumes in the City; the incremental increases in traffic as a result of future projects would be cumulatively significant.

Landform Alteration: The proposed regulations would result in loss of landforms including hillsides; the incremental loss of these unique landscape features would be cumulatively significant.

Historical Resources: Development pressure from implementation of biological conservation programs may result in development of areas with significant historical resources that may otherwise have been left undisturbed; the incremental losses of historical resources would be cumulatively significant.

Paleontological Resources: Since the proposed project contains no regulations to protect paleontological resources, fossil resources would only be detected and researched when development projects are subject to environmental review. There would be incremental losses of fossil resources both because there are no regulatory protections, and due to development that is likely to occur in accordance with the proposed regulations.

ALTERNATIVES FOR SIGNIFICANT IMPACTS:

There are four project alternatives that would avoid or lessen the significant impacts identified above. These alternatives are described in greater detail in Chapter VIII of the attached EIR.

1. No Project

According to this alternative, the City Council could reject in full the proposed Land Development Code and not take the associated actions. This alternative would result in a continuation of existing zoning and regulations.

If this alternative is adopted, the goals of the zoning code update project would not be met. The proposed changes to the Code which would make it easier to understand and use would not be effected and the benefit of a more uniform organization of regulations would not be realized.

2. Alternative Biological Resource Protection

According to this alternative, the specific elements of the proposed project which would implement the Draft MSCP would not be adopted; however, all the other elements of the proposed resource protection regulations would be retained and adopted. That is, the following proposed regulations would remain: the hillside regulations; the landscaping regulations; the historical resource regulations; regulations for development in floodplains and sensitive coastal resource areas;

and coastal beaches and bluffs regulations. As proposed, the protection for wetland buffers would be eliminated.

~~This alternative includes elimination of the distinction between lands within the~~ MSCP preserve and outside the preserve boundary. This alternative would most closely approximate the biological resource protection regulations that exist currently. Protection of sensitive biological resources would be achieved by applying citywide biological resource protections that are proposed to apply only in the MSCP preserve.

Adoption of this alternative would mean that the MSCP would not be implemented. Protection of biological resources would continue to be effected in a piecemeal fashion, rather than being directed toward a large contiguous landholding as a preserve.

3. Retain Existing Resource Protection Regulations

With this alternative, all of the proposed resource regulations would be rejected, including the Environmentally Sensitive Lands Regulations, the Historical Resource Regulations, the OR-1-2 Zone, and portions of the Biological Guidelines. The existing regulations would be retained, including Resource Protection Ordinance, the Sensitive Coastal Resource Overlay Zone, and the Hillside Review Overlay Zone. The protection of wetland buffers would be retained.

This alternative would avoid impacts to sensitive biological, hillside and historical resources that would occur with implementation of the proposed project.

4. Alternative Language for Specific Sections of the Proposed Project

Since the project is primarily changes to ordinances, guidelines and standards, there are no conditions of approval upon which to attach mitigation measures. Thus, avoidance of significant impacts of the proposed regulatory scheme can be achieved by revising the regulatory language such that significant effects would not result. This alternative provides, in concept, regulatory language that would avoid the impacts in the areas of paleontological resources, historical resources, biological resources (wetlands and wetland buffers), and human health/public safety.

Unless project alternatives are adopted, project approval will require the decision-maker to make Findings, substantiated in the record, which state that: a) project alternatives are infeasible, and b) the overall project is acceptable despite significant impacts because of specific overriding considerations.

Lawrence C. Monserrate
Lawrence C. Monserrate
Principal Planner
Development Services Department

December 6, 1996
Date of Draft Report

April 8, 1997
Date of Final Report

Analyst: Baker

September 12, 1997
Date of Revised Final Report

PUBLIC REVIEW:

The following individuals, organizations, and agencies received a copy or notice of the draft EIR and were invited to comment on its accuracy and sufficiency:

City of San Diego

Mayor Susan Golding (MS 11A)
Councilmember Mathis, District 1 (MS 10A)
Councilmember Wear, District 2
Councilmember Kehoe, District 3
Councilmember Stevens, District 4
Councilmember Warden, District 5
Councilmember Stallings, District 6
Councilmember McCarty, District 7
Councilmember Vargas, District 8
Community and Neighborhood Services Bus. Ctr. - Betsy McCoulloch (MS 4A)
Community and Neighborhood Services Bus. Ctr. - Nancy Acevedo (MS 37)
Public Works Bus. Ctr. - Frank Belock (MS 9B)
Public Works Bus. Ctr. - Richard Hayes (MS 1102-A)
Public Works Bus. Ctr. - Mike Steffen (MS 51A)
Community & Economic Development - Kurt Chilcott (MS 9A)
Park & Recreation - Marcia McLatchy (MS 9A)
Assistant City Manager - Penelope Culbreth-Graft (MS 9A)
Deputy City Attorney Prescilla Dugard (MS 59)
Development Services - Tina Christiansen (MS 9A)
Wetlands Advisory Board - Robin Stribley (MS 37C)
Public Works Bus. Ctr. - Cruz Gonzales (MS 9B)
Public Works Bus. Ctr. - Susan Hamilton (MS 905)

Federal Agencies

SW Division, Naval Facilities Engineering Command (12)
NAS Miramar (14)
USMC - Col. Pender, Marine Air Base, El Toro
Army Corps of Engineers (26)
Border Patrol, William Pink (22)
Fish and Wildlife Service (23)
Department of Agriculture (25)
Bureau of Land Management, 6221 Box Springs Boulevard, Riverside, CA 92507
EPA Region 9
Marc Ebbib, Dept. Interior, Asst. to Secretary
600 Harrison Street #545, San Francisco, CA 94107

Vicki Kingslien, Director, Resource Management Division,
425 "I" Street NW #2060, Washington D.C. 20536
Tom Stahl, Asst. U.S. Attorney, 880 Front Street #6293, San Diego 92101
Pete Stine, National Biological Survey, 1920 20th Street
Sacramento, CA 95514
Lynn Cox, Office of the Solicitor, Dept. Interior, 2800 Cottage Way #2753
Sacramento, CA 95628

State of California

California Coastal Commission (47, 48)
State Clearinghouse (46)
CALTRANS (31)
Fish and Game (32)
Park and Recreation (40)
Regional Water Quality Control Board (44)
Native American Heritage Commission (56)
Department of Conservation (61)
Lands Commission (62)
Forestry
Office of Historic Preservation

County of San Diego

Board of Supervisors, Chair, 1700 Pacific Highway, San Diego 92101
DPLU- Tom Oberbauer (MS-065)
Public Works - Tom Garibay (MS 0336)
Parks and Recreation - Mike Kemp (MS -065)
Agriculture (MS -01)
Environmental Services Unit - Anna Noah (MS -0385)
County Health Department

Cities

Chula Vista (94)
Del Mar (96)
El Cajon (98)
Escondido (98)
Imperial Beach (99)
La Mesa (100)
Lemon Grove (101)
National City (102)
Poway (103)
Santee (104)
Solana Beach (105)
Carlsbad, 1200 Carlsbad Village, 92008
Encinitas, 505 S. Vulcan, 92024
Oceanside, 300 N. Hill St. 92054
San Marcos, 1 Civic Ctr. Dr., 92169
Vista, P.O. Box 1988, 92085
Coronado (95)

The Public Notice and/or Draft EIR is also distributed to the:

MSCP Working Group
Zoning Code Update Citizens' Advisory Committee
Zoning Code Update Mailing List
Recognized Community Planning Groups
Main and Branch City Libraries

Other Interested Parties

County Water Authority (73)
San Diego Association of Governments (108)
San Diego Gas & Electric (114)

San Dieguito River Park JPA (116)
 UCSD Library (134)
 Sierra Club (165)
 S. D. Natural History Museum (166)
 San Diego Audubon Society (167)
 California Native Plant Society (170)
 Ellen Bauder (175)
 SW Center for Biological Diversity (176)
 Citizens Coordinate for Century III (179)
 Endangered Habitats League (182)
 San Diego Historical Society (211)
 San Diego Museum of Man (212)
 Save Our Heritage Organization (214)
 San Diego County Archaeological Society (218)
 California Indian Legal Services (225)
 San Diego City Schools, Mel Roop, 4100 Normal St., San Diego, CA 92103
 Opal Trueblood, 13014 Caminito del Rocío, Del Mar, CA 92014
 La Jolla Town Council, 1055 Wall Street, Suite 110, La Jolla, CA 92038

Copies of the draft EIR, the Mitigation Monitoring and Reporting Program and any technical appendices may be reviewed in the office of the Land Development Review Division, or purchased for the cost of reproduction.

RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but the comments do not address the accuracy or completeness of the environmental report. No response is necessary and the letters are attached at the end of the EIR.
- (X) Comments addressing the accuracy or completeness of the EIR were received during the public input period. The letters and responses follow.

PREFACE TO THE FINAL EIR FOR THE PROPOSED LAND DEVELOPMENT CODE AND ASSOCIATED ACTIONS

Subsequent to preparation of the Draft EIR and distribution of the Final EIR, revisions to the proposed Land Development Code and Land Development Manual have been made. Strikeout/redline versions of the revised Code and Manual were prepared in April 1997 and the Final EIR was prepared based on those versions. The Final EIR, including a Preface describing the changes in the proposed project, was distributed in April 1997. Additional changes in the project have been made since that time as a result of public comments and direction from the Planning Commission and City Council Committee on Land Use and Housing. New strikeout/redline versions of the Land Development Code and Manual have been prepared (dated September 1997) and are available for public review. This Preface has been revised to describe all of the changes made to the project since preparation of the Draft EIR in December 1996. In addition, several comment letters on the Draft EIR contained acceptable revisions which resulted in changes in the Final EIR. The Responses to Comments indicate where revisions have been made. The Final EIR reflects revisions made in response to public comment and changes in the project. Major changes to the EIR and in the project are summarized below. The revisions to the project and Final EIR do not constitute significant new information and recirculation of the EIR is not required.

FINAL EIR

- The Biological Resources analysis was revised to delete the discussion regarding Biological Survey Reports. It was determined, subsequent to preparation of the Draft EIR, that the requirements for Biological Survey Reports would not have a significant impact on biological resources.
- Alternative 4 was expanded to include more specifics with regard to alternative regulatory language which, if adopted, would avoid or reduce the significant impacts identified with the proposed project language. The Final EIR includes greater detail on alternative language in the areas of biological resources, brush management, and landform alteration. The Final EIR does not include alternative language relating to marine industrial uses because the regulations were revised since preparation of the Draft EIR.

LAND DEVELOPMENT CODE

Chapter 11

- The Board of Zoning Appeals would consider general relief variances but would not consider Process Two appeals. The Historical Resources Board has the authority to identify specific areas that would be exempt from the requirement for a historical resources survey.
- Diagram 112-05A (Decision Processes With Notices) has been revised to reflect that community planning groups receive notice, to reformat the key for clarification, and to delete the State Coastal Commission processes. The Planning Commission would hear Process Two appeals rather than the Board of Zoning Appeals.
- Various defined terms have been added, deleted, and modified. The term Archaeological Site has been deleted. The definition of Coastal Bluff Edge has been modified to be more consistent

with the existing Municipal Code by including reference to changing downward gradient. The terms Designated Historical Resource, Historical Building, Historical District, Historical Landscape, Historical Object, Historical Structure, and Important Archaeological Site have been modified for clarity and to be consistent with the revised Historical Resources Regulations. MHPA has been added as a defined term to replace MSCP Preserve and means the multiple habitat planning areas as identified by the City of San Diego MSCP Subarea Plan. The MHPA includes areas to be preserved and areas where development may occur. MSCP Preserve was deleted as a defined term. MSCP Subarea Plan was added to describe the plan. The Sensitive Biological Resources definition was modified to delete habitat of species of special concern and California fully protected species. The term Significant Archaeological Site has been deleted. SRO Hotel Room was revised so that it may not contain a kitchen and may have shared sanitary facilities. The Wetlands definition has been revised to reflect agreements made in development of the MSCP and to add wetlands depicted on Map C-713 (coastal wetlands) to the definition.

- Various Rules for Calculation and Measurement have been modified. Bluff rounding and erosional processes were added in determining the coastal bluff edge which is consistent with the existing Municipal Code. In determining existing grade, added grade that existed on March 4, 1972 will be considered existing grade, when a premises is disturbed. The grading proposed with a tentative map will be used as existing grade when the map is approved. In determining proposed grade, the highest floor of a multi-floor basement will be used. Limitations were added to the calculation of gross floor area for enclosed space built over open, at-grade space. Clarification of regulations for measuring structure height when a basement is proposed.

Chapter 12

- Language was added to specify that a Historical Resources Board designation decision may be appealed by an applicant or interested person.
- Revisions to Neighborhood Use, Conditional Use, Neighborhood Development and Site Development procedures and permit thresholds to be consistent with changes in Chapters 13 and 14 were made. Findings for Neighborhood Use, Neighborhood Development, and Site Development permits were modified so that granting of the permit would not adversely affect the applicable land use plan. The CUP regulations were modified so that the decision maker cannot allow less restrictive regulations except through a variance process. A finding for environmentally sensitive lands was added which requires consistency with the MSCP Subarea Plan. Findings for alternative compliance for steep hillside development area regulations were added. A new finding was added for those developments that are requesting deviations as part of the Planned Development Permit. Thresholds and findings for disturbance of Class II historical resources have been deleted. The remaining supplemental findings for historical resources were revised to be consistent with revised regulations.
- Categorical Exclusions from a Coastal Development permit were deleted. An exemption was added for demolition and alteration of a structure within the coastal zone if it is not a historical resource. An exemption was added for single dwelling unit development in the coastal zone if it does not exceed 80 percent of the allowable floor area ratio and height. The decision process for Coastal Development permits was changed to Process Two in the non-appealable area and remains a Process Three in the appealable area.

- Language was added to clarify the loss of previously conforming rights when a premises or use is brought into conformance. References to previously conforming parking and landscape regulations that are contained in Chapter 14 were added. Regulations were revised so that a previously conforming use cannot change to a use that is separately regulated.

Chapter 13

- Revisions were made to the use categories and subcategories for base zones and minor revisions were made to the use regulations tables. Amusement parks were deleted as separately regulated uses and only larger outdoor facilities are included in the scope of privately operated recreation facilities. Clarifications were made to the mobile home park, multiple dwelling unit, and single dwelling unit use subcategories to better link the definition to the lot or premises. Repair, distribution and assembly were deleted from the retail sales use category. Photographic services was added to the business support use subcategory. New commercial services subcategories were added for funeral and mortuary services and radio and television studios. The public assembly and entertainment subcategory was revised for clarity. The light manufacturing subcategory was revised to exclude any uses that utilize explosive, petroleum, or radioactive materials.
- Child care centers and private recreational facilities were added as conditional uses in the OP-1-1 zone and park maintenance facilities were added as permitted uses in the OP-2-1 zone. Minor telecommunication facilities are a limited use in those zones where they are allowed. The purpose of the OR zones was clarified. Golf course driving ranges are limited within the MHPA. Revisions to the regulations for development area were made to clarify that all of the area outside of the MHPA can be developed unless otherwise limited. Clarifications were added explaining when the additional 5 percent development area may be utilized.
- Interpretive centers were added as a permitted use in the AG zones and energy generation and distribution facilities were added as a conditional use in the AR zones. Minor telecommunication facilities are a limited use in the AG, AR and all residential zones. Privately operated outdoor recreation facilities were added as a separately regulated use requiring a CUP in the AR zones. Housing for senior citizens and exhibit halls and convention facilities were deleted as a separately regulated use in the AR zones.
- The maximum floor area ratio was increased from 0.30 to 0.35 in the RE-1-3 zone and in other RE zones when the setbacks are increased. Allowable structure height was increased from 30 feet to 35 feet and the exclusion of up to 400 square feet of garage area in the calculation of floor area ratio was added in the RS-1-8 through RS-1-14 and RT zones. The standard and minimum setback requirements were reduced for narrow lots.
- Development regulations for parking lot orientation were clarified. Many uses that were previously shown as permitted or conditionally permitted are no longer permitted when they are not consistent with other uses allowed in the particular zone or may now require a conditional use permit. Marine industry was deleted as a permitted use in the CR, CV and CC-5 zones. Funeral and mortuary services and radio and television studios have been added as permitted uses in all CR, CC, IL-2-1, IL-3-1, and IH-2-1 zones.

- Radio and television studios have been added as permitted uses in all industrial zones except the IP-1-1 and IH-1-1 zones. Sports arenas and stadiums have been added as conditional uses in the IP-2-1, IL-2-1, IL-3-1, and IH-2-1 zones. Regional and corporate headquarters are allowed in the IH-2-1 zone consistent with the existing Municipal Code (i.e., one per parcel). Camping parks have been deleted as a conditional use from all industrial zones. Impound storage yards have been revised from a conditional use to a permitted use in the IL-2-1, IL-3-1, and IS-1-1 zones and deleted from the IP-1-1 and IP-2-1 zones. Marine industry and marine related uses have been added as a permitted use in the IL-2-1 zone.

Chapter 14

- Parking standards for uses not covered in the Parking Regulations were added. Employee housing and communication antenna regulations were revised. Regulations prohibiting companion units when the vacancy rate exceeds 5 percent and within the Coastal Zone and the agricultural zones of the FUA were added. Revised restrictions on uses within the FUA to be consistent with the existing Municipal Code. Deleted amusement parks as a separately regulated use; it will be permitted under the subcategory of privately operated recreation facilities over 40,000 square feet. The decision process for automobile service stations was changed from Process Two to Process Three. Processing and packaging of plant and animal products was moved from agricultural use category to industrial use category.
- The applicability table for Landscape Regulations was clarified. The plant point schedule increased and plant material, irrigation, and area requirements were clarified. Yard planting area and point requirements were revised to include the existing Municipal Code planting point reduction. Overall plant point requirements were reduced. Revegetation requirements were revised to reflect requirements from the Landscape Technical Manual. Minor clarifications to brush management and water conservation requirements were added.
- Text was added to clarify parking requirements for previously conforming premises and to provide for a Neighborhood Development permit for uses that have been discontinued for more than two years. Parking requirements were added for transitional housing, botanical gardens, exhibit halls, convention facilities, funeral parlors and mortuaries, and vehicle sales and rentals.
- The threshold for development area regulations on steep hillsides for single dwelling unit lots was reduced to 15,000 square feet. The Site Development Permit exemption for interior or exterior modifications was revised to require a 40-foot setback from the coastal bluff edge for any second-plus story addition to a structure on a sensitive coastal bluff. Site Development Permit exemptions were added for zone two brush management and minor improvements for existing structures on steep hillsides, consistent with the existing Municipal Code. A Site Development Permit exemption was added for habitat restoration projects. The development area exemption for mining and extractive industries with the MHPA was deleted. An exemption from the development area limitations for sensitive biological resources for zone two brush management was added. Code enforcement regulations have been added for unlawful development in environmentally sensitive lands. Revisions were made to the emergency permit regulations to acknowledge that only authorization is necessary to impact environmentally sensitive lands in the event of an emergency and that a subsequent Site Development Permit will

only be required if the impacts are permanent. The requirement for consultation with the wildlife agencies was revised to require that the applicant confer with the agencies. The regulations for unavoidable impacts to wetlands were revised to reference impacts associated with a deviation instead, since a deviation is the only way impacts to wetlands can be considered. Regulations requiring wetland buffers were added. Regulation that limits impacts to sensitive biological resources outside the MHPA for specified conditions was added. The requirement to avoid impacts to narrow endemic species was revised to only apply inside the MHPA. Measures for protection of narrow endemic species outside the MHPA were added and specific mitigation requirements were deleted. A regulation requiring consistency with the City of San Diego MSCP Subarea Plan was added. Regulations for grading during wildlife breeding seasons were added. A clarification was added that the setbacks from the coastal bluff edge apply to all development. Regulations requiring a visual corridor were revised. New regulations for alternative compliance for additional steep hillside encroachment were added.

- Regulations for Class II historical resources were deleted and regulations for remaining historical resources were reorganized. Minor modifications were made to the applicability text and table for clarification and consistency with revisions to regulations. Minor modifications were made to site-specific survey requirements to clarify language and allow areas to be exempted by the City Manager or Historical Resources Board. An exemption was added which provides for substantial alteration of a non-contributing structure located in a historic district. The exemption for an important archaeological site was modified to require a 100-foot setback with no discretion. Minor modifications were made to the general development regulations for clarification and to reference the Historical Resources Guidelines of the Land Development Manual. The requirement for Covenants of Easements was deleted. Regulations have been added requiring approval of new development on a premises when a deviation for demolition or removal of designated historical building or structure has been granted.
- A Neighborhood Development Permit was added to the regulations applicability table for previously conforming parking for a discontinued use. In the regulations applicability table, the Site Development Permits for the Airport Approach Overlay Zone, the Airport Environs Overlay Zone, and the Clairemont Mesa Height Limit Overlay Zone were corrected to indicate a Process Three rather than a Process Five decision.
- The title and applicability of the general development regulations for Planned Development Permits (Section 143.0410) were revised so that they do not apply to those Planned Development Permits within Land Use Plans that require the permit in conjunction with another discretionary action. If deviations from any base zone development regulations are proposed, a requirement for compliance with the general development regulations was added; deviations to residential density are not permitted. Some of the regulations in the general development regulations section were revised to state that they "should" be complied with, rather than "shall" be complied with, in order to provide flexibility in how a development can achieve compliance. The maximum permitted building coverage for residential projects was increased to 60 percent. Open space requirements were revised or deleted. Other minor revisions for clarification were made to other Planned Development Permit regulations.
- The purpose and applicability of the SRO hotel regulations was revised to include rehabilitation of existing SRO hotels and rooms. The housing replacement requirement for new SRO hotel

rooms to contain a sink and screened toilet was deleted in favor of revisions to the definition of SRO hotel room. Other minor revisions for clarification were made to other SRO hotel regulations.

LAND DEVELOPMENT MANUAL

Biology Guidelines

- The Development Regulations for development in the MHPA were revised to incorporate the special conditions of coverage including impact avoidance areas within specified distances of nesting sites of certain raptors, known locations of southwestern pond turtles, and occupied burrowing owl burrows. Regulations were added for protection of narrow endemic species outside the MHPA. Regulations were added for wetland buffers and the definition of wetlands was revised. Restrictions were added with regard to grading activities during the breeding seasons of several bird species as identified by the conditions of coverage.
- The procedures for impact analysis and mitigation were modified to clarify that a biological survey report is required for all proposed development subject to the ESL regulations or where a CEQA initial study has resulted in the determination that there may be a significant impact on biological resources considered sensitive pursuant to CEQA. Further, the guidelines were revised to clarify that the survey report must identify impacts to Sensitive Biological Resources and to other significant biological resources as determined pursuant to the CEQA process. The guidelines were revised to state that mitigation may be required for sensitive species not covered by the MSCP, pursuant to CEQA.

Coastal Bluffs and Beaches Guidelines

- The Guidelines were revised to reflect the revisions made to the definitions of coastal bluff edge and reference to the geology and rounding of the bluff edge was added to the explanation of this definition. The explanation of the definition of coastal bluff face was revised to include reference to a rounded bluff edge. New diagrams were added for the definitions of coastal bluff edge and coastal bluff face. The description of the bluff edge setback regulations were revised to clarify that the basic 40-foot setback is a minimum and that a setback of more than 40 feet could be required. A statement was added that the rate of retreat of the bluff shall be considered in determining the bluff stability. A statement was added that future erosion control measures may be precluded if a reduced bluff edge setback is utilized. The regulations for view corridors and access easements were separated. In the Bluff Measurement Guidelines section, the interpretation of the coastal bluff edge definition was deleted since this information was included in the explanation of the definitions section. A clarification of the bluff edge examples was added. The bluff edge regulations for sea caves, gullies, and coastal canyons were revised and explanations of each of these land forms was added.

Historical Resources Guidelines

- The sections on San Diego History and Consultant Qualifications were made appendices to the Guidelines and other appendices were added. Revisions to clarify and better organize the text and incorporate public review comments were made. The Introduction and Development Review Process sections were modified to reflect the changes to the Code. Regulations for Class II historical resources were deleted. Areas to be exempted from the requirement for a site specific survey for the identification of a potential historical building or historical structure were added. Requirements for notification and consultation with the Native American Community were added. Requirements for curation of historical materials were added.

Landscape Guidelines

- Modifications to the revegetation requirements were made to be consistent with changes to the Code. Tree planting and maintenance requirements in the public right-of-way were added.

Steep Hillside Guidelines

- Clarification was added as to what is included as existing development area for a premises. The Findings and Deviations section was renamed and revised to address the revisions that were made to the Site Development Permit and alternative compliance and deviation findings. Other minor revisions were made to terms for clarification.

Article 3: Supplemental Development Regulations**Division 7: Affordable Housing Density Bonus Regulations****§143.0710 Purpose of Affordable Housing Density Bonus Regulations**

The purpose of these regulations is to provide increased residential *density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable housing for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income*, and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

§143.0715 When Affordable Housing Density Bonus Regulations Apply

This division applies to any residential *development*, located on land where current zoning allows for five or more pre-*density* bonus *dwelling units*, where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the *development* being reserved for *moderate, low, or very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land, in accordance with California Government Code Section 65915.

§143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which a written agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.

- (b) The *density* bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental affordable housing *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) *Low income* - At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
 - (2) *Very low income* - At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size.
 - (3) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
 - (4) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (d) A for-sale affordable housing *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) For-sale *density* bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the *development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted for assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.
 - (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.

- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) A *density* bonus agreement for housing for senior citizens shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a *mobilehome* park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
 - (2) The *dwelling units* shall remain available for a period of at least 30 years or longer as may be required by other laws.
- (f) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (g) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

§143.0725 Density Bonus Provisions

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(e), the *density* bonus shall be 20 percent.
- (b) For *development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that *development* shall be entitled to a *density* bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-*density* bonus units. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent.
- (c) For *development* meeting the criteria for *low income* in Section 143.0720(c)(1), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (d) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (e) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (f) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (g) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of

dwelling units permitted on each parcel is calculated based on the area of that parcel.

- (h) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income*, *low income* or *very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

§143.0730 Density Bonus in Exchange for Donation of Land

An *applicant* for a *tentative map*, *parcel map*, or residential *development* permit, may donate and transfer land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with California Government Code Section 65915.

§143.0740 Development Incentives for Affordable Housing Density Bonus Projects

The City shall process an incentive requested by an *applicant*, consistent with State Density Bonus Law and as set forth in this Section.

- (a) The *applicant* shall demonstrate that the incentive is necessary to make the housing units economically feasible.
- (b) An incentive means any of the following:
 - (1) A deviation to a *development* regulation;
 - (2) Approval of mixed use zoning in conjunction with a residential *development* provided that the commercial, office, or industrial uses:
 - (A) Reduce the cost of the residential *development*; and
 - (B) Are compatible with the proposed residential *development*; and
 - (C) Are compatible with existing or planned *development* in the area where the proposed residential *development* will be located.
 - (3) Any other incentive proposed by the *applicant*, other than those identified in Section 143.0740(c), that results in identifiable, financially sufficient, actual cost reductions.

- (c) Items not considered incentives by the City of San Diego include, but are not limited to the following:
- (1) A waiver of a required permit;
 - (2) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);
 - (3) A waiver of fees or dedication requirements;
 - (4) A direct financial incentive;
 - (5) A deviation from the requirements of the City of San Diego Building Regulations;
 - (6) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of No Hazard to Air Navigation.
- (d) An incentive requested as part of a *development* meeting the requirements of Sections 143.0720(c) or 143.0720(d) shall be processed according to the following:
- (1) Upon an *applicant's* request, *development* meeting the applicable requirements of Sections 143.0720 and 143.0725 shall be entitled to incentives pursuant to Section 143.0740 unless the City makes a written *finding* of denial based upon substantial evidence, of either of the following:
 - (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
 - (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
 - (2) Granting an incentive shall not require a General Plan amendment, zoning change, or other discretionary approval.
 - (3) The decision process for a *development* requesting an incentive shall be the same decision process that would be required if the incentive were not a part of the project proposal.

- (4) The *development* permit requirement for a *development* requesting an incentive shall be the same *development permit* that would be required if the incentive were not a part of the project proposal.
- (e) The number of incentives available are identified in Table 143-07A for *low income*, Table 143-07B for *very low income*, and Table 143-07C for *moderate income* consistent with the percentage of pre-density bonus units identified in column one of each table.

Table 143-07A
Low Income Density Bonus
Rental Housing

Percent <i>Low Income</i> units	Percent <i>Density Bonus</i>	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20 – 29	35	2
≥ 30	35	3

Table 143-07B
Very Low Income Density Bonus
Rental Housing

Percent <i>Very Low Income</i> Units	Percent <i>Density Bonus</i>	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 – 14	35	2
≥ 15	35	3

Table 143-07C
Moderate Income Density Bonus
For-Sale Housing

Percent <i>Moderate</i> <i>Income</i> Units	Percent <i>Density</i> Bonus	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25 – 29	35	2
≥ 30	35	3

- (f) Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:
- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(4);
 - (2) The percentage of children from *low*, *very low*, or *moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
 - (3) The additional *density* bonus or incentive requested is either:
 - (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or

- (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
- (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (g) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c),(d), or (e) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
 - (1) Zero to one bedroom: one onsite parking space
 - (2) Two to three bedrooms: two onsite parking spaces
 - (3) Four and more bedrooms: two and one-quarter parking spaces
 - (4) Additional reductions to the parking ratios shall be granted for projects within a *transit area*, and for *very low income* households as follows:
 - (A) *Development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire *development*.
 - (B) *Development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
 - (C) *Development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within a *transit area*, shall receive the combined reductions in sections 143.0740(g)(4)(A) and (B).
 - (5) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

§143.0750 Development in the Coastal Overlay Zone

- (a) *Development* within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.
- (b) The City may consider deviations from the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1 when requested by an *applicant* as an incentive for providing affordable housing consistent with this division, provided that the supplemental *findings* in Section 126.0708(b)(2) can be made.

126.0708 Findings for Coastal Development Permit Approval

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

- (a) [no change]
- (b) Supplemental Findings - Environmentally Sensitive Lands Within the Coastal Overlay Zone
 - (1) When a deviation is requested from the Environmentally Sensitive Lands Regulations because the *applicant* contends that application of the regulations would result in denial of all economically viable use, the following shall apply:
 - (A) Any *development permit* in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* and the supplemental *findings* for deviations from the Environmentally Sensitive Lands Regulations in addition to the *findings* for the applicable *development permit(s)*:
 - (i) Based on the economic information provided by the *applicant*, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the *applicant's* property;
 - (ii) Application of the Environmentally Sensitive Lands Regulations would interfere with the *applicant's* reasonable investment-backed expectations;
 - (iii) The use proposed by the *applicant* is consistent with the applicable zoning;
 - (iv) The use and project design, siting, and size are the minimum necessary to provide the *applicant* with an economically viable use of the *premises*; and
 - (v) The project is the least environmentally damaging alternative and is consistent with all provisions of

the certified Local Coastal Program with the exception of the provision for which the deviation is requested.

- (B) The Coastal Development Permit shall include a determination of economically viable use.
 - (C) The public hearing on the Coastal Development Permit shall address the economically viable use determination.
 - (D) The *findings* adopted by the decision making authority shall identify the evidence supporting the *findings*.
- (2) A deviation from the Environmentally Sensitive Lands Regulations when requested as an incentive for providing affordable housing pursuant to the Affordable Housing Density Bonus Regulations in Chapter 14, Article 3, Division 7, may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0708(a)(1) through (4) and 126.0708(b)(1):
- (A) Feasible alternatives to the requested incentive and the effect of such alternatives on coastal resources have been considered;
 - (B) Granting the incentive or alternative will not adversely affect coastal resources.

§141.0310 Housing for Senior Citizens

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing Density Bonus Regulations).
- (c) through (e) [no change]

**Parking Ratios for Projects Utilizing
Affordable Housing Density Bonus**

Unit Size	Proposed Density Bonus ¹	Citywide Requirement for Multi-family	Difference
Studio	1.00	1.25 ²	-0.25
1 bdrm.	1.00	1.50 ²	-0.50
2 bdrms.	2.00	2.00	0
3 bdrms.	2.00	2.25	-0.25
4+ bdrms.	2.25 ³	2.25	0

¹ Additional decreases allowed in the Land Development Code for very-low income and Transit and Urban Village Overlay Zone would be in addition to these reductions. Also the state regulations require that tandem parking be permitted and counted toward meeting the ratios.

² Senior Housing (maximum 1 bedroom) – 1 space/unit, or 0.7 space/unit plus 1 space/employee at peak hours.

³ The state requirement is for 2.5 spaces; however it has been reduced to the citywide requirement of 2.25.

**STATEMENT OF OVERRIDING CONSIDERATIONS
FOR THE PROPOSED REVISIONS TO THE
DENSITY BONUS ORDINANCE**

The City Council, pursuant to the State CEQA Guidelines, after balancing the benefits of the proposed Land Development Code amendments and associated actions against the potentially unavoidable significant direct and cumulative impacts of the project on Visual Quality (Neighborhood Character/Views/Aesthetics) and Transportation/Parking hereby determines that the impacts are acceptable for the following reasons:

1. Additional residential development allowed by the proposed regulatory changes would be beneficial in helping to address the ongoing affordable housing shortage in the City.
2. The proposed regulatory changes will foster development of moderate income condominiums which will increase first time homeownership opportunities in the City. Increasing first time homeownership opportunities is key goal of the Housing Element.

FINDING AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE PROPOSED REVISIONS TO THE DENSITY BONUS ORDINANCE WITHIN THE LAND DEVELOPMENT CODE

The following Findings and Statement of Overriding Considerations are made relative to the conclusions of the Supplemental EIR and the Final EIR for the Land Development Code and associated actions (LDR No. 96-0333, SCH No. 96081056).

The proposed revisions to the Land Development Code are to implement Assembly Bill 1866, State Senate Bills 1818 and 435, and facilitate the development of affordable housing within the City of San Diego. The goal of the density bonus ordinance is to increase the supply of affordable housing by bringing the City's density bonus ordinance into compliance with state law and enacting two additional provisions specific to San Diego. The recently adopted state law requires the City to provide up to three regulatory incentives to applicants that provide affordable housing using the density bonus law; it provides additional incentives to qualifying projects that include on-site day care facilities; it expands the density bonus entitlement option to all common interest developments (condominium, condominium conversions, and planned unit developments) which provide for-sale units restricted to moderate income residents; it adds a density bonus category for projects that include the donation of land to the City; it increases the maximum density bonus from 25 percent to 35 percent with a sliding scale of density bonus from 5 percent to 35 percent depending upon the level of affordability and proportion of affordable units; it limits the parking standards required for density bonus projects and allows tandem parking within projects that qualify for the density bonus; it changes the length of the affordability requirements; it clarifies that the density bonus for senior development also applies to senior mobilehome parks.

In addition to the new provisions included within state law, the City would offer up to a 10 percent density bonus to projects that build their inclusionary units on-site rather than paying an in-lieu affordable housing fee, and increase the base density bonus for projects that provide moderate income ownership units from 5 percent to 20.

The Supplemental EIR for the project evaluates the following environmental issues in relation to the project: Visual Quality (Neighborhood Character/Views/Aesthetics) and Transportation/Parking. The Supplemental EIR also analyzes the cumulative effects and growth inducing impacts of the project, as well as alternatives to the project.

Having reviewed and considered the information contained in the Supplemental EIR, the final EIR for the Land Development Code and associated actions (LDR No. 96-0333), related documents and the public record, the Council of the City of San Diego makes the following finding pursuant to Section 15091 of the California Administrative Code.

Specific economic, legal, social, technological, or other considerations make infeasible the project alternatives identified in the Supplemental EIR to reduce the following significant impacts:

1. **Visual Quality (Neighborhood Character/Views/Aesthetics)**

Impact: Inconsistency with the development regulations of the underlying zone, such as setbacks, lot size, height and FAR which creates the potential for impacts to neighborhood character, views and aesthetics.

2. **Transportation/Parking**

Impact: Inconsistency with the transportation and parking regulations of the underlying zone which creates the potential for impacts to traffic circulation and parking.

In addition to the effects directly attributable to the project, as described above, the project would result in effects on an incremental basis, which when added to other past, present, and reasonably foreseeable future projects would be cumulatively significant.

FINDING: The Supplemental EIR addresses a range of project alternatives which could reduce one or more of the significant impacts that would result from the proposed revisions to the Density Bonus Ordinance. The environmental benefits of each of these alternatives and the reasons for their rejection are described below.

1. The **No Project alternative** would result in a continuation of the existing density bonus regulations. This alternative is infeasible for the following reasons:
 - A. This alternative would not contain the density bonus incentive(s) which would provide an incentive for the construction of affordable housing on-site rather than payment of an in-lieu inclusionary fee. It is anticipated that fewer affordable housing units would be constructed.
 - B. This alternative would not contain the 20 percent density bonus provision for moderate income ownership units necessary to attract the additional development of affordable housing that would help the City of San Diego meet or begin to meet required affordable housing goals.
 - C. This alternative would not meet the goals of the project which are to increase the supply of the City's affordable housing by both bringing the City's density bonus ordinance into compliance with state law and enacting two additional provisions specific to San Diego.
 - D. The City's density bonus ordinance would not be brought into compliance with state law.
2. The **"Elimination of the On-site Inclusionary Units Density Bonus Alternative"** would remove the City's incentive. This alternative is infeasible for the following reasons:

- A. This alternative does not contain the density bonus incentive which would provide an incentive for the construction of affordable housing on-site rather than payment of an in-lieu inclusionary fee.
- B. This alternative would not meet the goals of the project which are to increase the supply of the City's affordable housing by both bringing the City's density bonus ordinance into compliance with state law and enacting two additional provisions specific to San Diego.
- C. This alternative would make it more difficult for the City to achieve its affordable housing goals.

3. The **"Elimination of the City's 20 Percent Density Bonus for Moderate Income Ownership Units"** would remove the City's additional 20 percent density bonus. However, this alternative is infeasible for the following reason:

- A. This alternative does not contain the 20 percent density bonus provision for moderate income ownership units that could attract the additional development of affordable housing.
- B. This alternative would not meet the goals of the project which are to increase the supply of the City's affordable housing by both bringing the City's density bonus ordinance into compliance with state law and enacting two additional provisions specific to San Diego.
- C. This alternative would make it more difficult for the City to achieve its affordable housing goals. The state 5 percent density bonus is a disincentive because it has a negative cost impact on development of housing.

FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE PROPOSED CHANGES TO THE DENSITY BONUS ORDINANCE

The California Environmental Quality Act (CEQA) requires that no public agency shall approve or carry out a project which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

1. Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects on the environment.
2. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been or can or should be, adopted by that other agency.
3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

(Section 21081 of the California Environmental Quality Act)

CEQA further requires that, where the decision of the public agency allows the occurrence of significant effects which are identified in the Supplemental EIR, but are not at least substantially mitigated, the agency shall state in writing the specific reasons to support its action based on the Supplemental EIR and/or other information in the record (Section 15093 of the State CEQA Guidelines).

The following Finding and Statement of Overriding Considerations have been submitted by the project applicant as candidate findings to be made by the decision-making body. The Land Development Review Division of Development Services does not recommend that the discretionary body either adopt or reject these findings. They are attached to allow readers of this report an opportunity to review the applicant's position on this matter.